

**CITY OF HILDALE PROFESSIONAL SERVICES AGREEMENT
FOR SERVICES WITH JONES & DEMILLE ENGINEERING, INC.**

This Agreement is made and entered into this 17 day of December, 2024, by and between the City of Hildale, a municipal corporation, with offices at 320 Newell Ave., Hildale, Utah 84784 (hereinafter called the “CITY”), and Jones & DeMille Engineering, Inc., with offices at 1535 South 100 West, Richfield, Utah 84701 (hereinafter called “CONSULTANT”).

WITNESSETH THAT:

WHEREAS CITY desires professional services to be performed and has solicited CONSULTANT to provide general engineering services on Hildale City ▪ Maxwell Canyon Public Utility and Access Improvements (hereinafter called the PROJECT); and

WHEREAS, CONSULTANT has submitted a proposal, which outlines the general scope of services to be provided and the hourly rate for the PROJECT; and

WHEREAS CITY selected CONSULTANT to perform the services for the PROJECT;

NOW, THEREFORE, for the consideration hereinafter set forth, the parties hereto do mutually agree as follows:

1. **ENGAGEMENT OF CONSULTANT.**

- 1.1 CONSULTANT is a professional licensed by the State of Utah and the City of Hildale. CONSULTANT has all licenses, permits, and approvals that are legally required for CONSULTANT to practice its profession and shall keep them in effect at all times during the term of this Agreement.
- 1.2 CONSULTANT states that it has the necessary knowledge, experience, abilities, skills, and resources to perform its obligations under this Agreement and agrees to perform its obligations under this Agreement in a professional manner, consistent with prevailing industry standards and practices as observed by competent practitioners of the profession in which CONSULTANT and its subcontractors or agents are engaged.
- 1.3 CONSULTANT certifies that it does not and will not during the performance of this contract knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC §1324(a). CONSULTANT agrees to require all subcontractors at the time they are hired for this project to sign a Certification of Legal Work Status and submit the Certification to THE CITY OF HILDALE prior to any work being performed by the subcontractors. CONSULTANT agrees to

produce, at CITY OF HILDALE'S request, documents to verify compliance with applicable State and Federal laws. If CONSULTANT knowingly employs workers or subcontractors in violation of 8 USC § 1324(a), such violation shall be cause for unilateral cancellation of the contract between CONSULTANT and CITY OF HILDALE. In addition, CONSULTANT may be suspended from participating in future projects with CITY OF HILDALE for a period of one (1) year. In the event this contract is terminated due to a violation of 8 USC § 1324(a) by CONSULTANT or a subcontractor of CONSULTANT, CONSULTANT shall be liable for any and all costs associated with such termination, including, but not limited to, any damages incurred by CITY OF HILDALE as well as attorney fees. For purposes of compliance, CITY OF HILDALE requires CONSULTANT and subcontractors to use E-Verify or other federally accepted forms of verification to verify the employment eligibility of all employees as allowed by law and the E-Verify procedures. CONSULTANT and subcontractors must maintain authorized documentation of the verification.

- 1.4 CONSULTANT shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any confidential information relative to the work of City of Hildale or the operations or procedures of CITY OF HILDALE without the prior written consent of CITY OF HILDALE, or unless under legal obligations through a court order from the state of Utah or federal government
- 1.5 CONSULTANT further agrees that it shall not, during the term of this Agreement, take any action that would affect the appearance of impartiality or professionalism.
- 1.6 CONSULTANT, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability, or marital status in its employment practices.
- 1.7 CONSULTANT expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve CONSULTANT from any obligation to comply with all applicable requirements of CITY OF HILDALE during the term of this Agreement including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies, and procedures of CITY OF HILDALE, except as modified or waived in this Agreement.
- 1.8 CONSULTANT shall comply with all applicable federal, state, and local laws, regulations, and ordinances that affect those employees or those engaged by CONSULTANT on the PROJECT, and will procure all necessary licenses, permits and insurance required.
- 1.9 CITY OF HILDALE acknowledges that CONSULTANT may employ various specialized subcontractors for up to 15% of the services provided herein. CONSULTANT shall give written notice to CITY OF HILDALE at least seven (7) days prior to CONSULTANT'S employment of the subcontractors to perform

portions of the work provided for in this Agreement. It shall be solely CONSULTANT's responsibility to ensure that any of CONSULTANT'S subcontractors perform in compliance with the terms of this Agreement. Subcontractors may not be changed without ten (10) days prior written notice to CITY OF HILDALE.

2. **PROJECT SERVICES DESCRIPTION.**

- 2.1 CITY OF HILDALE makes no guarantee as to the total volume of work, if any, that will be needed under this Agreement. CONSULTANT will provide the services on an as needed basis as described in the attached Scope of Work (**Exhibit A**) which is made a part of this Agreement by this reference. As services are needed, CITY OF HILDALE shall provide CONSULTANT with a description of the work needed which shall be known as a "Work Order" and CONSULTANT will provide CITY OF HILDALE with a specific scope of work and cost for the Work Order, which if accepted by the CITY OF HILDALE shall become part of this Agreement binding both parties. CITY OF HILDALE may at any time, as the need arises, order changes within the scope of the services without invalidating the Agreement. If such changes increase or decrease the amount due under the Agreement, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order.
- 2.2 CONSULTANT shall furnish all the material, supplies, tools, transportation, equipment, labor, subcontractor services and other services necessary for the completion of the work described in **Exhibit A** or in subsequent Work Orders.
- 2.3 CONSULTANT shall provide services in compliance with all applicable requirements of federal, state, and local laws, codes, rules, regulations, ordinances, and standards.

3. **TERM OF AGREEMENT.**

- 3.1 This Agreement shall be effective as of the date executed by all parties and shall continue for one year unless otherwise terminated as set forth in this Agreement. If a Work Order was started during this term but not completed, the terms of this Agreement shall continue through completion of the Work Order.
- 3.2 CONSULTANT agrees to perform services as expeditiously as is consistent with professional skill and care and the orderly progress of the PROJECT. CONSULTANT shall perform the services in a timely manner according to the schedule approved by CITY OF HILDALE.
- 3.3 CONSULTANT shall perform its services upon notice from CITY OF HILDALE to proceed and in accordance with the schedule approved by CITY OF HILDALE. In the event performance of its services is delayed by causes beyond the reasonable control of CONSULTANT, and without the fault or negligence of CONSULTANT,

the time for the performance of the services shall be equitably adjusted by written amendment to reflect the extent of such delay. CONSULTANT shall provide CITY OF HILDALE with written notice of delay, including a description of the delay and the steps contemplated or taken by CONSULTANT to mitigate the effect of such delay.

4. **COMPENSATION.** For the performance of the services and completion of PROJECT set forth herein, CITY OF HILDALE shall pay CONSULTANT as agreed in Exhibit “A” and each Work Order. The aggregate total of all Work Orders shall not exceed five hundred forty thousand dollars (\$540,000).

5. **INVOICING, PAYMENT, NOTICES.**

- 5.1 CONSULTANT shall submit invoices, no more frequently than monthly, for the services rendered during the preceding period; invoices shall describe the services performed, list all subcontractors used and the amount owed or paid to them, list all suppliers used and the amount owed or paid to them, list the contract amount, list the current invoice amount based on percentage of task complete, list the previous invoice amount, list total invoices to date, and list the contract balance.
- 5.2 In executing the request for payment, CONSULTANT shall attest that payment has been made to all subcontractors involved with prior requests, unless CONSULTANT provides a detailed explanation why such payments have not occurred. CONSULTANT shall also sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status and submit them with each request for payment. CONSULTANT shall require each subcontractor to sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status at the time subcontractor is paid and shall provide a copy of both documents to CITY OF HILDALE. CONSULTANT shall also sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status and submit them with each request for payment.
- 5.3 A “Waiver and Release Upon Final Payment” signed by CONSULTANT attesting that all subcontractors, laborers, and material suppliers involved with prior requests for payment have been paid, and that all subcontractors, laborers, and material suppliers upon which the final payment is based will be paid immediately unless CONSULTANT provides a detailed explanation why such payments have not occurred or will not occur. CONSULTANT shall also require each subcontractor to sign a “Waiver and Release Upon Final Payment” and a Certificate of Legal Work Status at the time subcontractor is paid its final payment and shall provide a copy of both documents to CITY OF HILDALE.
- 5.4 If such liens, claims, security interests or encumbrances remain unsatisfied after payments are made, CONSULTANT shall refund to CITY OF HILDALE all money that CITY OF HILDALE may be compelled to pay in discharging such liens, including all costs and reasonable attorneys' fees.

- 5.5 All invoices for reimbursable costs shall be taken from the books of account kept by CONSULTANT, and CONSULTANT shall maintain copies of payroll distribution, receipted bills, and other documents. The CITY OF HILDALE shall have the right to review all invoices and receipts of reimbursable expenses kept by CONSULTANT and any subcontractors concerning the operation and services performed under this Agreement. The CITY OF HILDALE shall withhold payment for any expenditure not substantiated by CONSULTANT's or subcontractor's books and records.
- 5.6 In the event CITY OF HILDALE has made payment for expenditures that are not allowed, as determined by CITY OF HILDALE'S audit, CONSULTANT shall reimburse CITY OF HILDALE the amount of the un-allowed expenditures. If additional money is owed to CONSULTANT, the reimbursement may be deducted from the additional money owed.
- 5.7 CITY OF HILDALE shall make no payment for any services not specified in this Agreement unless such additional services and the price thereof are agreed to in writing, prior to the time that such additional services are rendered.
- 5.8 Invoices shall be paid to CONSULTANT within thirty (30) days of presentation to CITY OF HILDALE.
- 5.9 CITY OF HILDALE may withhold 5% of billed amount as retention. Retention held shall be included in the final invoice after the contract is complete.

6. **CHARGES AND EXTRA SERVICE.**

- 6.6 CITY OF HILDALE may make changes within the general scope of this Agreement. If CONSULTANT is of the opinion a proposed change causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONSULTANT shall notify CITY OF HILDALE of that fact. An agreed-upon change will be reduced to writing signed by the parties hereto and will modify this Agreement accordingly. CONSULTANT may initiate such notification upon identifying conditions which may change the services agreed to on the effective date of this Agreement, as set forth in **Exhibit A**. However, CONSULTANT represents that to the best of its knowledge it is not aware of any such conditions on the date hereof. Any such notification must be provided within thirty (30) days from the date of receipt by that party of the other party's written notification of a proposed change.
- 6.7 CITY OF HILDALE may request CONSULTANT to perform extra services not covered by **Exhibit A**, and CONSULTANT shall perform such extra services and will be compensated for such extra services when they are reduced to a writing mutually agreed to and signed by the parties hereto amending this Agreement accordingly.

- 6.8 CITY OF HILDALE shall not be liable for payment of any extra services, nor shall CONSULTANT be obligated to perform any extra services except upon such written amendment.
7. **TO BE FURNISHED BY CITY.** Resources to be furnished by CITY OF HILDALE to CONSULTANT, at no cost to CONSULTANT, consist of CITY OF HILDALE staff assistance for oversight and meetings to help perform the services. CONSULTANT shall verify accuracy of the information provided, unless otherwise stated in the contract documents.
8. **INSPECTIONS.** All work shall be subject to inspection and approval of CITY OF HILDALE or its authorized representative.
9. **ACCURACY AND COMPLETENESS.**
- 9.1 CONSULTANT has total responsibility for the accuracy and completeness of its investigations, calculations, reports, plans and related designs, specifications and estimates prepared for the PROJECT and shall check all such material accordingly.
- 9.2 The plans will be reviewed by CITY OF HILDALE for conformity with PROJECT objectives and compliance with CITY OF HILDALE Standards.
- 9.3 Reviews by CITY OF HILDALE do NOT include the detailed review or checking of major design components and related details or the accuracy with which such designs are depicted on the plans.
- 9.4 The responsibility for accuracy and completeness remains solely with CONSULTANT and shall be performed consistent with the standard of care.
10. **INDEPENDENT CONTRACTOR.**
- 10.1 CITY OF HILDALE retains and engages CONSULTANT, as an independent contractor, to act for and represent it in all matters involved in the performance of services on the PROJECT, subject to the terms, conditions and stipulations as hereinafter stated.
- 10.2 It is understood and agreed that CONSULTANT will provide the services without supervision from CITY OF HILDALE. CONSULTANT is an independent contractor and is not an employee, officer, or agent of CITY OF HILDALE for any purposes related to the performance of this Agreement and is not an employee of CITY OF HILDALE and is not entitled to any benefits from CITY OF HILDALE.
- 10.3 Nothing in this agreement shall create nor be construed to constitute a partnership or joint venture between CONSULTANT and CITY OF HILDALE.

- 10.4 CONSULTANT is advised to obtain and maintain in effect during the term of this Agreement medical insurance and disability insurance for all related work performed under this Agreement.
- 10.5 CONSULTANT acknowledges that CITY OF HILDALE will not withhold any federal, state, or local taxes, including FICA, nor will CITY OF HILDALE provide any unemployment compensation or worker's compensation coverage. As an independent contractor, CONSULTANT shall be responsible for all taxes, worker's compensation coverage and insurance coverage, and shall hold CITY OF HILDALE harmless and indemnify CITY OF HILDALE from and against any and all claims related to taxes, unemployment compensation, and worker's compensation.
- 10.6 CONSULTANT shall secure, at its own expense all personnel required in performing the services under this Agreement. The employees of CONSULTANT shall not be considered employees of CITY OF HILDALE nor have any contractual relationship with CITY OF HILDALE. CONSULTANT and its employees shall not hold themselves out as, nor claim to be officers or employees of CITY OF HILDALE by reason of this Agreement. The employees of CITY OF HILDALE shall not be considered employees of CONSULTANT.
- 10.7 Neither party has the right to bind or obligate the other in any way. CONSULTANT shall not use the name, trademarks, copyrighted materials, or any information related to this Agreement in any advertising or publicity without CITY OF HILDALE'S prior written authorization.

11. **INSURANCE.**

- 11.1 GENERAL: CONSULTANT shall secure and maintain insurance as required by laws and regulations and the terms of this agreement to protect against any liability, loss or expense which occurs or arises as a result of the performance of the services provided pursuant to this agreement or as changed as provided herein. CONSULTANT'S insurer must be authorized to do business in Utah and must have an A.M. Best rating of A VIII or better at the time this contract is executed.
- 11.2 COMMENCEMENT OF WORK: Neither CONSULTANT, its Suppliers nor any subcontractors shall enter the site of the work or commence work under this contract before CITY OF HILDALE has received and accepted Certificate(s) of Insurance and Insurance Endorsements and has issued the Notice to Proceed.
- 11.3 INSURANCE CERTIFICATES AND COVERAGE: Insurance certificates shall be issued on all policies required under this contract and shall be signed by an authorized representative of the insurance company. The insurance certificate or the coverage required shall include the following:

- A. The name and address of the insured.
 - B. CITY OF HILDALE shall be named as a Certificate Holder.
 - C. CITY OF HILDALE shall be named as an additional primary insured on the General Liability Certificate with CITY OF HILDALE listed as non-contributory on the General Liability certificate.
 - D. The location of the operations to which the insurance applies.
 - E. The number of the policy and the type or types of insurance in force thereunder on the date borne by the certificate.
 - F. The expiration date of the policy and the limit or limits of liability thereunder on the date borne by the certificate.
 - G. A statement that all coverage is on an occurrence basis rather than a claims basis except for the Professional Errors and Omissions Malpractice Insurance coverage.
 - H. A provision that the policy or policies will not be cancelled, denied renewal, or reduced in coverage until at least 30 days after written notice has been received by CITY OF HILDALE.
 - I. Name, address, and telephone number of the insurance company's agent of process in Utah.
 - J. Other information to demonstrate compliance with additional requirements stipulated for the various types of insurance coverage.
- 11.4 COMPENSATION INSURANCE: CONSULTANT shall take out and maintain Workers' Compensation Insurance as required by the Labor Code for all its employees at the site of the work during the life of this contract. Coverage must be provided by a company authorized by the State of Utah to provide Workers' Compensation Insurance. The insurance shall include:
- 11.5 Insurance certificates shall provide a waiver of subrogation by the carrier to Certificate Holder.
- 11.6 CONSULTANT shall require each subcontractor to provide Workers' Compensation Insurance for its employees unless such employees are covered by CONSULTANT.
- 11.7 In the event any class of employees engaged in hazardous work under this contract is not protected by the Workers' Compensation Statute, CONSULTANT shall provide, and shall cause its subcontractors to provide, special insurance for the

protection of such employees not otherwise protected.

11.8 COMMERCIAL GENERAL LIABILITY INSURANCE: CONSULTANT shall procure and maintain commercial general liability insurance for the duration of the contract against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, its agents, representatives, employees, or subcontractors. The insurance shall remain in effect during the term of this agreement and such that claims reported beyond the date of substantial completion of this agreement are covered and during the warranty period, to the extent that it relates to the activities covered by this Agreement, in such manner and amounts as set forth herein. The Insurance Endorsement shall evidence such provisions.

A. The minimum commercial general liability insurance shall be as follows:

- i. Comprehensive general liability insurance for injuries, including accidental death, to any one person in any one occurrence in an amount not less than \$1,000,000.00 Dollars.
- ii. Comprehensive general liability insurance for injuries, including accidental death, to two or more persons in any one occurrence in an amount not less than \$3,000,000.00 Dollars (umbrella coverage may be considered).
- iii. Broad form property damage insurance in an amount not less than \$300,000.00 Dollars.

B. Such policy shall include each of the following coverages:

- i. Comprehensive form.
- ii. Premises - operations.
- iii. Explosion and collapse hazard.
- iv. Underground hazard.
- v. Product/completed operations hazard.
- vi. Contractual insurance.
- vii. Broad form property damage, including completed operations.
- viii. Independent contractors for vicarious liability.
- ix. Personal injury.
- x. Cross liability or severability of interest's clause shall be included unless a separate policy covering CITY OF HILDALE is provided.

11.8 PROFESSIONAL LIABILITY ERRORS AND OMISSIONS INSURANCE:

A. CONSULTANT shall carry and maintain Professional Liability Errors and Omissions Insurance in an amount not less than \$3,000,000.00 Dollars for all work performed under this Agreement.

- B. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, its agents, representatives, employees, or subcontractors. With respect to General Liability, Professional liability coverage should be maintained for a minimum of five (5) years after contract completion.
- C. If Professional Liability coverages are written on a claims-made form:
 - i. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the contract of work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the CONSULTANT must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.
 - iv. A copy of the policy must be submitted to CITY OF HILDALE for review.

11.9 BUSINESS AUTOMOBILE COVERAGE: CONSULTANT shall carry and maintain business automobile insurance coverage on each vehicle used in the performance of the work in an amount not less than \$1,000,000.00 Dollars for one person and \$3,000,000.00 Dollars for more than one person and for property damage resulting from any one occurrence which may arise from the operations of CONSULTANT in performing the work.

Such business automobile insurance shall include each of the following types:

- A. Comprehensive form, including loading and unloading.
- B. Owned.
- C. Hired.
- D. Non-owned.

12. **INDEMNITY AND LIMITATION.**

The CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, CITY OF HILDALE) against all damages, liabilities or costs, including reasonable

attorneys' fees and defense costs, to the extent caused by the CONSULTANT's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the CONSULTANT is legally liable. The CITY OF HILDALE agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, CONSULTANT) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the CITY OF HILDALE is legally liable. Neither the CITY OF HILDALE nor the CONSULTANT shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

13. **DOCUMENTS.**

13.1 Ownership and Reuse of Documents

All documents prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of service, and CONSULTANT shall retain an ownership and property interest therein. Reuse of any such documents by CITY OF HILDALE shall be at CITY OF HILDALE's sole risk; and CITY OF HILDALE agrees to indemnify, and hold CONSULTANT harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by CITY OF HILDALE or by acting through CITY OF HILDALE.

13.2 Use of Electronic Media

a. Copies of Documents that may be relied upon by CITY OF HILDALE are limited to the printed copies (also known as hard copies) that are signed or sealed by the CONSULTANT. Files in electronic media format of text, data, graphics, or of other types that are furnished by CONSULTANT to CITY OF HILDALE are only for convenience of CITY OF HILDALE. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

b. When transferring documents in electronic media format, Engineer makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by CONSULTANT at the beginning of this Assignment.

c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period

will be corrected by the party delivering the electronic files. CONSULTANT shall not be responsible to maintain documents stored in electronic media format after acceptance by CITY OF HILDALE.

14. **RECORDS.**

- 14.1 CONSULTANT shall maintain records, books, documents, and other evidence directly pertinent to the performance of services under this Agreement in accordance with generally accepted accounting principles and practices.
- 14.2 CONSULTANT agrees to keep proper books of records and accounts in which complete and correct entries will be made of payroll costs, travel, subsistence, and field expenses.
- 14.3 Invoices and receipts of reimbursable expenses shall, at all times, be available for at least three (3) years after final payment for reasonable examination by CITY OF HILDALE.

15. **TERMINATION.**

- 15.1 CITY OF HILDALE and/or CONSULTANT, may terminate this Agreement by providing fourteen (14) days written notice prior to the effective termination date to other party.
- 15.2 In the event of such termination, CITY OF HILDALE shall pay CONSULTANT for all services actually rendered up to and including the date of termination.
- 15.3 CONSULTANT shall deliver to CITY OF HILDALE copies of all drawings, reports, analyses, documents, and investigations, whether completed or not, that were prepared or were being prepared under the provisions of this Agreement.

16. **CONFLICT BETWEEN DOCUMENTS.** In the event of a conflict between this Agreement and any other documents with CONSULTANT, this Agreement shall govern.

17. **CONFLICT OF INTEREST.** CONSULTANT certifies that it has disclosed to CITY OF HILDALE any actual, apparent or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement.

- 17.1 CONSULTANT agrees to advise CITY OF HILDALE of any actual, apparent or potential conflicts of interest that may develop after the date of execution of this Agreement.
- 17.2 CONSULTANT further agrees to complete any statements of economic interest required by either CITY OF HILDALE ordinance or State law.

18. **NON-WAIVER.** No failure or waiver or successive failures or waivers on the part of either party hereto, their successors or permittee assigns, in the enforcement of any condition, covenant, or Article of this Agreement shall operate as a discharge of any such condition, covenant, or Article nor render the same invalid, nor impair the right of either party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns.

19. **NOTIFICATION.** All notices required or permitted to be made by either party in connection with this Agreement shall be in writing, and shall be deemed to have been duly given: (a) five (5) business days after the date of mailing if sent by U.S. mail, postage prepaid, (b) when transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine and a copy of such facsimile is promptly sent by another means specified in this Section; or (c) when delivered if delivered personally or sent by express courier service. All notices shall be sent to the other party at its address as set forth below unless written notice is given by either party of a change of address:

CITY:	City of Hildale 320 East Newel Avenue P.O. Box 840490 Hildale, Utah 84784	CONSULTANT:	Jones & DeMille Engineering, Inc. 1535 South 100 West Richfield, Utah 84701
Attention:	Donia Jessop	Attention:	Riley Vane riley.v@jonesanddemille.com

20. **GOVERNING LAW AND VENUE.** This Agreement shall be construed according to the laws of the State of Utah. The parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court for the State of Utah. The parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction. The parties shall have all rights and remedies provided under applicable Federal or State law for a breach or threatened breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party agree that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the sovereign immunity of the government parties.

21. **LEGAL FEES.**

Dispute Resolution

a. OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“disputes”) to mediation.

b. If a party alleges a dispute or controversy with the other party arising out of or relating to the performance of services under this Agreement, then either party shall have the right

to request mediation within 20 days after the claiming party has-provided the other party with written notice describing the dispute and the claiming party's position with reference to the resolution of the dispute.

c. Except as otherwise agreed, mediation will proceed pursuant to the Construction Industry Mediation Rules of the American Arbitration Association in effect on the Effective Date of the Agreement. A mediator will be appointed within 30 days of receipt of a written request. The mediator will endeavor to complete the mediation within 30 days thereafter.

d. No performance obligation under or related to this Agreement shall be interrupted or delayed during any mediation proceeding except upon written agreement of both parties.

22. **MODIFICATION OF AGREEMENT.** CITY OF HILDALE specifically reserves the right to modify or amend this Agreement and the total sum due hereunder either by enlarging or restricting the scope of the Work. All modifications shall be in writing and executed by both parties. Each Work Order adopted under this Agreement shall incorporate the terms and conditions of this Agreement and shall constitute a modification to this contract. A Work Order may amend the terms and conditions of this Agreement only as they apply to that particular Work Order and shall not have any general effect on this Agreement.
23. **RESERVED LEGISLATIVE POWERS.** Nothing in this Agreement shall limit the future exercise of the police power by CITY OF HILDALE in enacting zoning, subdivision, development, transportation, environment, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement, but which shall not be retroactively applied to or modify this Agreement.
24. **SUCCESSORS AND ASSIGNS.** CONSULTANT shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Agreement without assigning the rights and the responsibilities under this Agreement and without the prior written approval of CITY OF HILDALE. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.
25. **NO JOINT VENTURE, PARTNERSHIP OR THIRD-PARTY RIGHTS.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the parties. No term or provision of this Agreement is intended to or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
26. **INTEGRATION.** This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature between CITY OF HILDALE and CONSULTANT and

supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to this PROJECT.

27. **SEVERABILITY.** If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
28. **CONSTRUCTION.** N/A
29. **SURVIVAL.** It is expressly agreed that the terms, covenants, and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.
30. **HEADINGS.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
31. **COUNTERPARTS.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.
32. **AUTHORITY OF PARTIES.** The parties executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated and that this Agreement constitutes a valid and binding Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the CITY OF HILDALE and CONSULTANT effective from the day and year first written above.

CITY: CITY OF HILDALE

CONSULTANT: JONES & DEMILLE ENGINEERING,
INC.

Donia Jessop, Mayor

Brian Barton, CEO

Approved as to form:
Hildale City Attorney

Sirrene Barlow, City Recorder

By: _____

Exhibit A



**Jones & DeMille
Engineering**

www.jonesanddemille.com | 800.748.5275

December 16, 2024

Hildale City
Attn: Lawrence Barlow, Economic Development Director
320 East Newel Avenue
Hildale, Utah 84784

Email: lawrenceb@hildalecity.com
Phone: (435) 874-2323

RE: Maxwell Canyon Public Utility and Access Improvements

Lawrence,

We appreciate the opportunity to provide a proposal for the above-referenced project. It is our understanding that Hildale (the City) intends to proceed with the design and construction of the Maxwell Canyon utilities and access project. The City was awarded \$3,079,000 from the Community Impact Board (CIB) on October 3, 2024 for the utilities extension up through Maxwell Canyon to the Maxwell Park. Also included is the access crossing of Maxwell Creek near the park and embankment improvements necessary for the health and safety of the City drinking water source.

Jones & DeMille Engineering (JDE) has the necessary resources and expertise to accomplish this undertaking. Based on these findings, we suggest the following scope of work:

SCOPE OF WORK

Pre-construction Engineering and Design Total \$250,000 – Lump Sum

1. CIB Fund Administration and Project Management Services
 - a. Prepare documentation and billing for reimbursement requests.
 - b. Track overall project budget and progress.
 - c. Regular reports to City and representative.

2. Survey Services
 - a. Occupancy Survey
 - i. Research (county record information) deed, record-of-survey, subdivisions, etc. for approximate parcel and rights-of-way boundaries.
 - ii. Locate evidence lines of occupation, and any monumentation found during the survey.
 - iii. Show record deed lines.

1535 South 100 West
Richfield, UT 84701
435.896.8266

50 South Main, Suite 4
Manti, UT 84642
435.835.4540

38 West 100 North
Vernal, UT 84078
435.781.1988

1675 South Highway 10
Price, UT 84501
435.637.8266

520 West Highway 40
Roosevelt, UT 84066
435.722.8267

775 West 1200 North
Suite 200A
Springville, UT 84663
801.692.0219

1664 South Dixie Drive
Building G
St. George, UT 84770
435.986.3622

7 South Main Street
Suite 107/109
Tooele, UT 84074
435.268.8089

696 North Main Street
PO Box 577
Monticello, UT 84535
435.587.9100

545 East Cheyenne Drive
Suite C
Evanston, WY 82930
307.288.2005

- iv. Show relationship between record deed lines and occupation lines. Suggest ALTA or boundary survey
 - v. Identify critical encumbrances from title search, if provided by Client.
 - b. Supplemental Topographic Survey
 - i. This is considered as-needed and supplemental to the survey performed under the planning contract JDE project 2404-0111
 - ii. Set project benchmark as elevation control through construction.
 - c. Easements
 - i. *Preparation of legal descriptions for easements or proposed rights-of-way is excluded from this scope of work. It is assumed that the utilities will be placed immediately adjacent to or under the existing public access roads and additional easements/rights-of-way are not required.*
- 3. Environmental Services
 - a. Preparation of a Plan of Development (POD) and management plan as required by BLM
- 4. Structural Engineering Services
 - a. Prepare structural engineering design, including structural calculations, for a cast-in-place, multi-cell box culvert with accompanying wing walls and headwalls.
 - b. Prepare structural drawings for the box culvert including structural sections, reinforcing details, and associated structural details.
- 5. Site Civil Engineering and Design Services
 - a. Concept Site Plan (30% Design)
 - i. Perform site visit and observation prior to concept design services. No more than 1 site visit is included.
 - ii. Meet with Client to develop concept site plan and establish Project Design Criteria (PDC).
 - iii. Submit 811 request for utility block maps and coordinate with local utility providers. Review and analyze existing conditions and survey.
 - iv. Coordinate and meet with additional entities that will influence design, as directed by Client.
 - 1. Washington County School District (irrigation line)
 - 2. Garkane Power (relocate power poles)
 - 3. Bureau of Land Management
 - v. Conceptual design and draft concept site plan.
 - 1. Align dry, water and wastewater utilities in Canyon St. Set wastewater main grades and manhole depths.
 - 2. Align the culvert crossing and preliminary grading of Maxwell Creek crossing. Set maximum culvert height and hydraulic parameters.
 - vi. Meet with Client and Authority Having Jurisdiction (AHJ) to review concept plan and receive comments (via formal submittal or otherwise) prior to preliminary engineering services.
 - b. Preliminary Engineering and Design (60% Design)
 - i. Update concept design with Client and AHJ comments. Identify typical site details, per AHJ. Preliminary design and grading of crossing and utilities.



1. Update utility design according to calculations.
 2. Update culvert design, dimensions, and span according to calculations.
 3. Update bank armoring according to water modeling and sizing calculations.
 - ii. Prepare preliminary plan set (including updated site, demolition, utilities, and drainage and grading plans.)
 - iii. Prepare preliminary summary of quantities.
 - c. Final Engineering and Design (Construction Drawings)
 - i. Update and finalize preliminary design and grading of roads, parking lots, concrete surfaces, building elevations, and utilities. Design non-typical site details.
 - ii. Final site design and grading
 - iii. Prepare single stage erosion control design and Best Management Practice (BMP) plan.
 - iv. Prepare final summary of quantities. Prepare Class 1 (final) Engineer's Opinion of Probable Cost (OPC)
 - v. Prepare final plan set (including all preliminary plan set sheets, details, and plans and profiles.)
 - vi. Prepare project specifications in book format for project manual.
6. Stormwater Engineering and Drainage Design Services
- a. Identify AHJ stormwater requirements and site hazards. Identify downstream discharge points and calculate existing watershed hydrology.
 - b. Calculate developed hydrology and model watershed hydraulics. Size pre-cast culvert. Size bank armoring and model culvert crossing. Optimal cost/benefit option of culvert vs low water crossing will be calculated for the selected design event.
 - c. Prepare drainage report.
7. Water and Wastewater Engineering and Design Services
- a. Calculate existing system capacities and proposed impact.
 - b. Build and calibrate model(s).
 - c. Prepare water and wastewater report.
8. Contractor Procurement Services
- a. Contract Documents
 - i. Prepare bidding and construction contract documents.
 - b. Advertising
 - i. Post bid, respond to questions, direct the pre-bid meeting, issue addenda, bid opening and assist with contract awarding.

Construction Engineering and Administration

\$290,000 - Lump Sum

1. Quality Assurance Services
 - a. Provide qualified on-site resident project representative as directed by City during construction and testing periods. Representation includes time for travel, office work, and field observations and documentation. Up to a 30-week construction period is included.
 - b. Construction kick-off meeting with the City, engineer, construction project manager, resident project representative, contractor, utility owners, and other impacted parties.



- c. Prepare observation notes and log progress of construction on ProCore (cloud-based construction management program).
 - d. Prepare reports and hold weekly construction meetings with contractor, owner, and funding agency throughout period of construction, as directed by the City. Review partial payment requests.
 - e. Project Closeout
 - i. Prepare final project closeout reports for regulatory agencies.
 - ii. Issue punch list, substantial completion and final completion documents.
 - iii. Final walk-through with owner, contractor, etc. personnel.
 - iv. Final Contract Record Drawings (CRDs) preparation.
2. Construction Staking Services
- a. One stake will be set at the roadway centerline, and an additional stake will be set at an offset to the roadway centerline.
 - b. Set cut/fill stakes of sewer manholes for both phases.
3. Materials Testing Services
- a. *Materials testing will be assigned to the contractor. No additional material testing is included in the scope of work.*

Assumptions and Limitations:

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1. Design criteria will be based on AHJ standards, as provided by Client. If criteria is not provided, improvements will be designed according to the Utah chapter of the American Public Works Association (APWA) standards and specifications.
 2. Client will provide the following data prior to the stage indicated:
 - a. Title search of the subject parcel (complete with easements and encumbrances) – prior to survey services.
 - b. Geotechnical investigation and soils report – prior to concept site design.
 3. Environmental Assumptions and Limitations:
 - a. Environmental services not explicitly stated above are excluded from the scope of work but may be contracted separately as needed. Such services include but are not limited to:
 - i. Preparation of documents for compliance with the National Environmental Policy Act (NEPA)
 - ii. Preparation of an aquatic resources delineation
 - iii. Permitting with the U.S. Army Corps of Engineers under the Clean Water Act for impacts to jurisdictional waters
 - iv. Biological surveys
 - v. Consultation with U.S. Fish and Wildlife Service in compliance with the Endangered Species Act
 - vi. Cultural or paleontological evaluations
 - vii. Permitting with Utah Division of Oil, Gas and Mining for material acquisition
 - viii. Stream alteration permitting with the Utah Division of Water Rights



4. Survey Assumptions and Limitations:
 - a. It is assumed all survey items listed above will be completed at one time. Any additional items requested will be charged per JDE hourly rates and subject to additional charges. No meetings are included in the scope of survey services.
 - b. JDE will not be responsible for any project-related permits, training or certification.
 - c. This estimate does not include addressing any boundary discrepancies discovered during the course of the survey, including, but not limited to, meetings, additional parcel descriptions, exhibits, easements and right-of-way preparation.
 - d. Subsurface utility mapping is limited to levels C and D as described:
 - Level A – Physical Locating: potholing and vacuum excavation of underground lines.
 - Level B – Virtual Locating: data collection via ground penetrating radar or similar of underground lines.
 - Level C – Surface Locating: survey of visible surface utilities, interpolate underground lines.
 - Level D – Mapping Records: contact utilities named on 811 services and request block maps for underground lines.
 - e. It is the Client’s responsibility to provide a title search of parcels being surveyed, to coordinate blue stakes or utility markings, and to coordinate site and building access.
 - f. This project may require the use of subconsultants.
 - g. This proposal does not include any construction staking, **however, JDE is capable and interested in contracting construction staking services.**
5. Structural Engineering Assumptions and Limitations:
 - a. Multi-cell box culvert will serve as a vehicular and pedestrian bridge for the park. Design will be per the current AASHTO LRFD design code.
6. Civil Engineering Assumptions and Limitations:
 - a. No iterations to site utilities and crossing layout are anticipated. Additional iterations can be completed using JDE standard hourly rates.
 - b. Engineering services not explicitly stated above are excluded from the scope of work but may be contracted separately as needed.
 - c. Engineer’s OPC prepared according to International ACE suggested methodology.
 - d. Obtaining approval letters and intents of service from utilities will be the Client’s responsibility.

SCHEDULE

JDE will work to complete the above scope of work in a reasonable, timely manner according to the project and funding needs. An earnest effort will be made to complete the services within the owner’s time constraints.

FEES

The foregoing scope of work for design services can be completed as itemized below.

Pre-construction Engineering and Design	Lump Sum	\$250,000
Construction Engineering and Administration	Lump Sum	\$290,000
	Lump Sum Total	\$540,000



Progress payments will be invoiced monthly throughout the project. Any adjustments to the scope of work can be completed for a negotiated lump sum fee or according to JDE's standard hourly rates. JDE reserves the right to adjust billing rates based on market conditions. This fee proposal shall remain valid for 30 (thirty) days from the proposal's issuance date. If contract is not signed within said term, fees may be subject to review.

CLOSURE

We appreciate and look forward to the opportunity to work on this important project. Our team has the proven capabilities to complete this work in a timely and efficient manner. We look forward to helping you shape the quality of life of those you serve. Please review this proposal and let us know if there are any questions or concerns.

Sincerely,

JONES & DeMILLE ENGINEERING, INC.



Riley Vane, PE
Project Manager

