

## **INTERGOVERNMENTAL COOPERATIVE AGREEMENT FOR UTILITIES SYSTEMS MANAGEMENT, OPERATION, AND MAINTENANCE**

**THIS AGREEMENT** is entered into between COLORADO CITY, ARIZONA (hereafter referred to as “Colorado City”), and HILDALE, UTAH, (hereafter referred to as “Hildale”), both of which are referred to individually as a “City” and collectively as “the Cities.”

### **WITNESSETH**

**WHEREAS**, pursuant to the provisions of Title 9, Chapter 5, Articles 2 and 3, Arizona Revised Statutes, as amended, and other applicable provisions of Arizona law (collectively, the “Arizona Act”) Colorado City is authorized to engage in any business or enterprise which may be engaged in by persons by virtue of a franchise from Colorado City, including facilities for utility services; and

**WHEREAS**, pursuant to the provisions of Title 10, Chapter 8 and Title 11, Chapter 14, Utah Code Annotated 1953, as amended, and other applicable provisions of Utah law (collectively, the “Utah Act”), Hildale is authorized to acquire, construct, maintain and operate facilities within or without its corporate limits for utilities, and to issue its bonds to finance the costs thereof; and

**WHEREAS**, pursuant to the provisions of Title 11, Chapter 7, Article 3, Arizona Revised Statutes, as amended (The “Arizona Joint Exercise of Powers Act”), Colorado City is authorized to enter into contracts and agreements for joint and cooperative action, services and the joint exercise of powers with, among others, any political subdivision of a state; and

**WHEREAS**, pursuant to Utah Code Ann. § 11-13-201 et seq (1953 as amended), the City is authorized to execute and administer contracts for the joint exercise of power with any public agency of any other state, exercising and enjoying all of the powers, privileges and authorities conferred by said act; and

**WHEREAS**, the Parties also recognized that this Agreement must adhere to to the Utah Interlocal Cooperation Act (“ICA”) found in Utah Code Ann. § 11-13-101 *et seq.*; and

**WHEREAS**, the Cities desire to construct, purchase, acquire own, manage, operate, maintain, finance and bill for utilities to provide water, sewer, gas and fiber optic networking services to the inhabitants of the Cities; and

**WHEREAS**, the water system, sewer system, gas system, and fiber optic system constitute separate systems in Hildale and in Colorado City for the purposes of acquisition, ownership and financing thereof, although such systems are operated and managed as a single system that serves both Cities; and

**WHEREAS**, the sewer system for both Cities is owned by Hildale, but for the purposes of system management and billing, Colorado City will adopt regulations governing the sewer system in Colorado City; and

**WHEREAS**, the water systems, sewer systems, gas systems and fiber optic systems in both Cities shall hereafter collectively be referred to as the “Utility System”;

**WHEREAS**, it is necessary for the good government of Colorado City and Hildale to jointly administer and operate the Utility System, to arrange storage, treatment and distribution resources and for the management of resources, and for the billing of retail utility service, with the advice of a joint advisory board with respect to certain legislative policies that shall guide utility operations; and

**WHEREAS**, it will promote the interest of efficient management of the Utility System that one City should hold primary responsibility for managing, operating and maintaining the Utility System, subject to cooperation with and oversight by the management and governing body of the other City.

**Now, THEREFORE**, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto as follows:

## **AGREEMENT**

### **Section 1. FINDINGS AND DETERMINATIONS.**

The parties to this Agreement hereby find, determine and declare that the joint, coordinated and cooperative management, operation and maintenance of the Utility System pursuant to the terms and provisions of this Agreement:

1. Is necessary for the regular and businesslike operation of the Utility System consistent with prudent utility practices;

2. Will enable each of the Cities to make the most efficient use of its powers with respect to the management, operation and maintenance of its portion of the Utility System to meet the existing and future needs of the residents of and businesses in that City's community; and
3. Will provide the benefits of economies of scale and reliable utility service to foster further economic development in the Cities and will promote the general welfare of each community.

## **Section 2. TERM.**

- A. This Agreement will be from \_\_\_ day of \_\_\_\_\_, 2022, until one of the parties to the IGA provides the other party to the IGA with a written Notice to Terminate this agreement at least twelve (12) months prior to the desired termination of the IGA. Upon termination of this agreement any property that is owned by either party, used pursuant to this agreement shall remain with or be returned to the owner of the property; Alternatively an agreed upon value for the property shall be reimbursed to the other party. This Agreement shall supersede previous utility service management, operation and maintenance agreements between Hildale City and Colorado City.

## **Section 3. UTILITY ADVISORY BOARD ESTABLISHED.**

- A. A joint advisory board is hereby established ("Utility Board" or "Board") which shall advise the Cities on legislative and strategic matters as set forth in this Agreement.
- B. The Utility Advisory Board shall have the following powers, duties and responsibilities on behalf of the Cities,
  1. Review of such annual operating budgets and long-term capital budgets as shall be proposed by Management Staff for the operation, maintenance, renewal and replacement of the Utility System and the recommendation of such budgets to each of the Cities as provided herein;
  2. Review and recommend to the Cities such amendments to schedules of utility rates and charges shall be proposed by Management Staff to ensure the financial stability of the Utility System in compliance with the respective obligations of the Cities;
  3. Review and recommend to the Cities such amendments to utility service regulations as shall be proposed by Utility Management Staff to ensure the prudent operation of the Utility System;
  4. Review and recommend to the Cities of such internal policies and procedures as shall be proposed by Utility Management Staff to govern the operation of the

- Utility System, including without limitation accounting, customer service, billing and collections, procurements, employee safety, and facilities security;
5. Review and recommendation to the Cities for approval of such Large Procurements as shall be proposed by Management Staff per Section 6 of this IGA; and
  6. Review and input to the Cities on the planning, study, and development of such short- and long-term capital projects as shall be proposed by Utility Management Staff as necessary or desirable for the continued growth and development of the Utility System and the Cities.

#### **Section 4. UTILITY BOARD MEMBERS.**

- A. The Board shall consist of five (5) individuals ("Members"), two (2) Members to be appointed by the Mayor of Hildale, two (2) Members to be appointed by the Mayor of Colorado City per policies adopted by each city; and one Member to be appointed by the joint designation of both cities. No one appointed to the Board shall be an elected official of either municipality.
- B. On the Effective Date of this Agreement the existing Utility Board shall be dissolved and the Mayors of each city shall appoint one (1) member to an initial 2-year term and one (1) member to an initial 3-year term and appoint a jointly appointed member to an initial 3-year term.
- C. The Members of the Utility Advisory Board shall be residents of the community which they represent. The joint appointee shall be a resident of either Colorado City or Hildale City.
- D. Each Member of the Board shall be entitled to one vote.
- E. Other than the Initial Members of the Board, the Members of the Board shall serve for terms of three (3) years. All subsequent appointments to the Board shall be for three-year terms commencing on January 1 and ending on December 31. Members may be reappointed for additional terms and may temporarily continue to serve at the end of their term until an appointment to fill the position is made pursuant to Subsection 4(A).
- F. Vacancies of appointed Members occurring otherwise than through expiration of term shall be filled for the remainder of the unexpired term Pursuant to Subsection 4(A).

- G. Notwithstanding the length of terms described above, Members shall serve at the pleasure of the respective City's governing body and may be removed at any time with or without cause.
- H. The Board Members may serve with compensation as determined by the Cities. The Members of the Board shall be entitled to reimbursement for actual expenses preauthorized in writing and incurred in the performance of duties, upon presentation of proper receipts and vouchers.
- I. The jointly selected Member shall serve as the Chairperson of the Board. The Board shall elect from among its Members a Vice-Chairperson. The terms of the Vice-Chairperson shall be for one calendar year, with the potential for additional terms.
- J. The Board may adopt such rules and by-laws as it may deem necessary for the proper conduct of its business, in compliance with applicable statutes and ordinances. The Board shall keep a public record of its proceedings per Section 20 of this Agreement.
- K. The regular meetings of the Utility Advisory Board shall occur each year on or as near as practicable to March 15<sup>th</sup>, June 15<sup>th</sup>, September 15<sup>th</sup>, and December 15<sup>th</sup>. Special meetings of the Utility Advisory Board may be called by the Chairperson when necessary to timely fulfill the duties and responsibilities of the Utility Advisory Board. The meetings of the Board shall be open to the public and shall be conducted in compliance with the open meeting laws of the State in which the meeting is conducted. The Utility Board may prescribe rules of conduct and procedure for its meetings.
- L. Meetings of the Utility Board may be held through electronic communication to the extent allowed by the laws of the state where the meeting is held. A Board Member participating in a meeting through such means shall be considered present for purposes of a quorum and voting.
- M. A quorum shall consist of three (3) Members, with a least one regular appointed member from each city. A vote of a majority of Members in attendance shall be required to take any action in a meeting duly convened with a quorum.

#### **Section 5. UTILITY SYSTEM MANAGEMENT.**

- A. The administrative offices for the utility system shall be based at the Hildale City office, located at 320 East Newel Avenue, Hildale, Utah.

- B. A Utility Director shall be hired based on the recruitment and hiring policies of the Town of Colorado City, the employer of record. The hiring committee shall consist of the Mayors and City Managers of both cities and the Chairperson of the Utility Advisory Board. In the event of a vacancy in the Utility Director Position, the Hildale City Manager shall act as the Utility Director pro tempore.
- C. Utility staff shall be hired under the recruitment and hiring policies of the Town of Colorado City, the employer of record. Utility staff payroll will be provided by the Town of Colorado City and paid for with funds from the utility system revenues.
- D. As per A.R.S. § 23-1022, any employee working within the jurisdictional boundary of the other party, pursuant to this IGA, will be provided worker's compensation benefits by the hiring employer only.
- E. As per Utah Code Ann. § 11-13-222 all privileges, immunities from liability, exemptions from laws, ordinances, and rules, pensions and relief, disability, workers compensations, and other benefits that apply to an officer, agent, or employee of a public agency (as defined in the ICA) while performing functions within the territorial limits of the public agency apply to the same degree and extent when the officer, agent, or employee performs functions or duties under this Agreement outside the territorial limits of that agency.
- F. Procurements shall be conducted by Hildale in compliance with Hildale's procurement code. No procurement that is subject to Section 6 below shall be completed without the approval of the respective city's Governing Body.
- G. In the event that a procurement is being made with State or Grant/Loan funding the procurement shall be conducted in compliance with the funding agencies requirements.
- H. The Utility Director shall report to the City Managers, in person or by other instantaneous method of communication followed by written notice, immediately following occurrence of any of the following:
  - i. Significant accidents resulting in loss of life, bodily injury, property damage, or environmental damage, or which may be reasonably expected to otherwise result in a claim against either cities insurance policies.

- ii. Actual or suspected fraud, theft or intentional damage of Utility System property.
  - iii. Actual or suspected illegal discrimination or harassment of a person by any other person in connection with the Utility System.
  - iv. Significant violations of applicable laws, regulations, ordinances, policies, or procedures.
- I. The Utility Director shall report to the City Managers in writing promptly following occurrence of any of the following:
- i. Proposals from Developers/Subdividers that may impact the Utility System.
  - ii. Changes in the position, rate of pay, or employment status of any Utility Personnel.
  - iii. Actual or threatened litigation concerning the Utility System, or to which either city may be made a party.

## **Section 6. SYSTEM EXPANSION**

- A. Upon the recommendation of the Management Staff, the Utility Board shall review and recommend to the Cities' respective governing bodies any contract and/or development agreements that impact the utility system(s) to:
- 1. Construct distribution or collection systems, pipelines, transmission lines, and other capital facilities;
  - 2. Sell Utility System products to any purchaser other than to an end-user in the ordinary course of utility business;
  - 3. Purchase franchises;
  - 4. Procure equipment and materials costing more than \$50,000 in a single procurement or, in the case of a lease of personal property, in a single fiscal year; or

5. Purchase or lease real property.
6. Review and recommend adoption of, or changes to, utility impact fees

#### **Section 7. SYSTEM RATES AND REGULATIONS.**

- A. The Management Staff shall have responsibility for development of proposed rate schedules for the Utility System when necessary, and to propose them to the Utility Board for review and recommendation of the same to the Cities for approval. It is the intent of the parties to this agreement that the commodity rates will be similar for both municipalities.
- B. Rates for utilities provided by the Utility System to the consumers shall be sufficient to cover all costs, including without limitation the costs of acquisition, operation and maintenance of the Utility System, liabilities, insurance, payment of all contractual obligations, establishment and funding of necessary reserves, sufficient cash availability for operations, and capital requirements for system upgrades, improvements, extensions and enlargements, to the extent directed by either Governing Body, payment of any general obligation indebtedness of either City relating to the Utility System, with due consideration being accorded to the terms, covenants and conditions contained in any contract of the Cities relating to the Utility System.
- C. When the Management Staff determines that an adjustment to the rate schedules is necessary, they shall prepare and submit to the Board a report describing the existing rates, the proposed adjustment, and the basis for their recommendation. The Management Staff may retain the services of such consulting engineers and financial advisors as may be necessary to assist in preparing their report. The Board shall review the report and, if it determines that an adjustment would be fiscally responsible, recommend the proposed adjustment for adoption by the Cities' respective governing bodies. Each Governing Body shall be responsible for adoption of the rates in their respective jurisdiction.
- D. The Board may elect to hold a public hearing before recommending any rate adjustment to the Cities. Notice of such hearing shall be given to afford an opportunity for interested citizens to appear and provide input on matters relative to the rates to be established. Each Governing Body may elect to hold public hearings in lieu of or in addition to public hearings before the Utility Board.



- E. If the Utility Board or either Governing Body finds that additional study and analysis is necessary before adopting a rate adjustment, it shall request a supplemental report from the Management Staff, specifically identifying in its request the additional study and analysis needed.
- F. At the conclusion of any Board action recommending a rate adjustment, the Board shall transmit its written recommendation for approval and adoption of the adjusted rate schedules to the Cities' governing bodies, including an explanation of the basis upon which the proposed rate adjustment is predicated.

**Section 8. UTILITY SERVICE REGULATIONS.**

- A. The Management Staff shall have responsibility for development of proposed utility service regulations as shall:
  - 1. Provide quality, consistent service according to capacity of the Utility System;
  - 2. Minimize the risk of personal injury or property damage or harm to customers, employees or third parties in operations of the Utility System and in the customers' installation and use;
  - 3. Enforce sound business policy;
  - 4. Ensure the prompt collection of all billings owed for services provided by:
    - i. Providing a clear, understandable billing policy and the timely and accurate billings of charges for services, and
    - ii. Minimizing the amount of accounts receivable and minimizing exposure for losses due to uncollectible accounts.
  - 5. Minimize or avoid losses;
  - 6. Provide requirements for prospective new customers according to the capacity of the system, while maintaining the flexibility and ability to serve existing customers;
  - 7. Allocate the burden of capital expenditures to ensure that capital investment is recovered by:
    - i. Minimizing the cost of line extensions and capital expenditures to the Cities;
    - and

- ii. Placing the cost of line extensions, source development or treatment for commercial, industrial or prospective uses on the new customer or a developer or subdivider of property ("Developer/Subdivider"), so as to protect existing customers from paying costs for a Developer/Subdivider;
    - iii. Recommending to the Cities the adoption of impact fees for new customers to offset defined impacts to the system.
  - 8. Provide a method for the fair resolution and disputes between the Utility System and its respective customers; and
  - 9. Promote the orderly and efficient management, operation and maintenance of the Utility System.
- B. When the Management Staff determines that an amendment to the utility service regulations is necessary, they shall prepare and submit to the Board a report describing the existing regulations and the proposed amendment, and the basis for their recommendation. The Board shall review the report, and if it determines that an amendment would be in the best interest of the community, recommend the proposed amendment for adoption by the Cities' respective governing bodies. If the Utility Board or either Governing Body finds that additional study and analysis is necessary before adopting an amendment, it shall request a supplemental report from the Management Staff, specifically identifying in its request the additional study and analysis needed.

**Section 9. OPERATION AND MAINTENANCE OF UTILITY SYSTEM.**

- A. The cost of management, operation and maintenance of the Utility System will be borne on a proportionate basis, determined annually, based upon the relative proportionate amounts of retail usage by each City.
- B. The Management Staff shall ensure that the Utility System is maintained, operated and improved to provide safe, reliable and efficient service. Such maintenance, operation and improvement shall include, but shall not be limited to, the following :
  - 1. Developing resources and facilities in accordance with Section 8(A)(7) above;
  - 2. Extending lines and installing meters to provide service to new customers in accordance with Section 8(A)(7) above;
  - 3. Regularly inspect and test customers' meters;
  - 4. Regularly inspect all lines, meters, and other components of the Utility System;
  - 5. Repair or replace, as appropriate, malfunctioning or outdated meters;

6. Repairing or replacing, as necessary, damaged, displaced or destroyed Utility System components;
  7. Provide planning, engineering and supervisory services in connection with such regular upgrades of Utility System components as shall be necessary in accordance with prudent utility practice;
  8. Provide all such other services as are normally required for the operation and maintenance of a utility system of similar size and complexity in accordance with prudent utility practice;
  9. Seek funding when possible for source or treatment development and maximizing government loan and grant opportunities on behalf of the Utility System;
  10. Adhere to quality regulation as required by each State.
- C. The Management Staff shall, in accordance with applicable law, accounting standards, and prudent utility practices, maintain records of:
1. The maintenance of the Utility System;
  2. The financial transactions of the Utility System;
  3. The inventory of Utility System assets; and
  4. The operations of the Utility System, including events of significance that occur in connection with the Utility System.
- D. Maps of the Utility System shall be maintained showing the location of the physical components of the system both within and without the respective City limits.
- E. The Management Staff shall plan improvements in accordance with the standards established by applicable governmental regulations applicable to the location of such improvements and shall also plan and/or coordinate extensions and expansions of the Utility System in conjunction with the other utilities in the area, and specifically those operated by the Cities.
- F. A plan shall be prepared by Utility Management Staff and kept current by the Governing Body of each of the Cities, which shall outline the anticipated capital improvements and expenditures over the next five succeeding years.
- G. Proposals from Developers/Subdividers that may impact the Utility System shall be negotiated primarily by the City affected by a proposed development, in close coordination with the Management Staff. In the event that a development is anticipated to increase demand on the Utility System by [15] ERU's or more, the terms negotiated with respect to the Utility System shall be presented in writing to the Utility Board. Prior to consideration of the proposal by the relevant City's Governing Body, the Board shall

meet and review the proposal and recommend for or against approval of the proposed development, in, the best interest of existing customers, and the financial stability of the Utility System.

**Section 10. UTILITY SYSTEM BILLINGS.**

- A. Utility Personnel shall prepare and render monthly bills to each customer of the Utility System. Such billings shall be prepared in such a manner as to clearly indicate whether the party billed is a customer in the City of Hildale or a customer in the Town of Colorado City.
- B. Such billings may provide that the customer shall remit payment to Hildale City as a servicer. Immediately upon receipt of any payments, Utility Personnel shall cause the amount received to be deposited in the respective Utility System operation fund, to the credit of the respective City of the customer.

**Section 11. UTILITY SYSTEM OPERATING FUNDS.**

- A. There is hereby established under the fiduciary management primarily by Hildale, and secondarily by Colorado City, five special funds, separate and distinct from all other funds and accounts of the Cities (but still maintained as the property of the Cities), to be known as the "Joint Operation Fund", the "Gas System Operation Fund", the "Water System Operation Fund", the "Sewer System Operation Fund", and the "Fiber System Operation Fund".
- B. The operation funds shall account for all revenues, receipts and income of the Utility System and all expenditures for costs of operation and maintenance, purchased gas, energy, water or transmission service, renewals, replacements, capital improvements, additions to the Utility Systems, Cities' Utility System employee salaries and benefits, insurance, and all other costs properly allocable to the operation of the Utility System.
- C. All revenues, receipts, and income from the operation of the Utility System shall be immediately deposited into the respective operation fund. All costs of operation shall be paid out of the respective operation fund when the same shall be due and payable. As convenient and appropriate, each respective operation fund may be obligated to deposit into the Joint Operation Fund sufficient funds to cover each operation fund's share of the general administrative expenses of the Utility System.

- D. Hildale shall maintain such books and records and may establish such separate accounts and sub-accounts with the operation funds, as shall be necessary to separately account for the revenues, costs of operation and resulting net revenues that are attributable to each respective portion of the Utility System.
- E. The operating funds shall be maintained with a recognized bank or financial institution and shall be secured in accordance with the provisions of the laws of the State of Utah governing the deposit of public funds to the extent permitted regarding funds derived from Colorado City customers.

**Section 12. ALLOCATION OF REVENUES AND EXPENSES.**

- A. All revenues, receipts and income derived from the operation of the sewer system portion of the Utility System shall be allocated to Hildale City as the owner of the system to the extent permitted by Arizona law for any portion of the sewer system located in Arizona.
- B. All revenues, receipts and income derived from the operation of the Gas, Water, and Fiber Optic Networking Systems shall be allocated between the Cities as follows:
  - 1. All revenues received from each of the Cities' customer billings shall be credited to that customer's City.
  - 2. Investment income shall be allocated between the Cities based upon the proportion that each City's balance in the Operation Fund bears to the total balance on deposit therein; and
  - 3. All other revenues, receipts and income shall be allocated between the Cities based upon initial Utility System cost, total energy sales, number of customers, or such other method as shall be fair and reasonable to each of the Cities. All revenues, receipts and income shall be so allocated when received.
  - 4. If any commodity produced by either city is sold at wholesale to another entity, the revenues derived from the sale shall be allocated as outlined in Section 12(C)1. Neither city shall agree to the sale of a commodity produced to another entity without the prior approval of each cities governing body.
- C. All costs and expenses incurred in the operation of the Gas, Water, and Fiber Optic Networking Systems shall be allocated between the Cities as follows:

1. All costs and expenses shall be allocated on the basis of the proportion of annual commodity usage to each City's Utility customers. The allocation of costs and expenses shall be reassessed annually prior to the beginning of each fiscal year and shall utilize commodity sales figures for the prior calendar.
2. If either city produces a commodity that is intended to be distributed to the customers of the system, the cost of production of the commodity shall be allocated to all customers of the commodity produced, as outlined in Section 12(C)1.
3. Colorado City and Hildale each agree to pay, but solely out of the revenues derived from the operation of the Colorado City portion of the Utility System and the Hildale portion of the Utility System, respectively, and as an operation and maintenance expense of and a first charge on the revenues of such Utility System, all amounts charged to it in respect to the costs and expenses incurred hereunder.

### **Section 13. BUDGETS.**

- A. An annual budget shall be prepared by the utility management staff for each utility system operating fund, in accordance with this Section and with the Uniform Fiscal Procedures Act for Utah Cities, to provide a complete financial plan for operations, setting forth the following in tabular form:
  1. Actual revenues and expenditures in the last completed fiscal year;
  2. Budget estimates for the current fiscal year;
  3. Actual revenues and expenditures for a period of six to nine months, as appropriate, of the current fiscal year;
  4. Estimated total revenue and expenditures for the current fiscal year;
  5. Estimates of revenues and expenditures for the upcoming budget year;
  6. An estimate of all capital projects which the Board and Management Staff believe should be undertaken within the next five succeeding years and the proposed method of payment for such projects;
  7. The latest available balance of capital accounts maintained by the Management Staff;
  8. A summary and review of rates, fees and charges for services rendered by the Utility System, with a summary of billings and actual receipts in each rate, fee or charge category for:
    - i. the current fiscal year, and
    - ii. the previous completed fiscal year;
  9. A summary of accounts receivable as of:

- i. the end of the last month of operation for which such data is available including losses and uncollectible accounts for the current fiscal year to date; and
  - ii. the end of the last completed fiscal year including losses and uncollectible accounts for the year.
10. A budget message, which shall explain the budget, containing an outline of the proposed financial policies of the utility department for the budget year, and shall describe in connection therewith the important features of the budgetary plan. It shall set forth a reason for material changes from the previous year and appropriation and revenue items.
- B. On or before April 15th of each year, the Management Staff shall prepare a proposed budget for the next fiscal year and present it to the Utility Board and the Managers of both cities. The Board shall review the tentative budget and, if it determines that the proposed budget would be fiscally responsible, recommend the proposed budget for adoption by the Cities. If the Board determines that adjustments to the proposed budget are necessary, it shall submit its written opinion to each City's Governing Body, explaining the recommended adjustments and the basis therefor.
- C. Upon final adoption, the budget shall be in effect for the applicable budget year.

#### **Section 14. ANNUAL REPORT.**

- A. The Management Staff, in addition to the reports and accounting it may otherwise be required by law to make, shall, as required by the Cities, not later than the last day of January in each year, furnish to the Utility Advisory Board and each City's Governing Body an annual report which shall include the following statements as of the end of the preceding fiscal year:
  1. A balance sheet showing the financial condition of the Utility System prepared according to generally accepted public utility accounting principles;
  2. A statement of operations; and
  3. Any additional supporting statements or schedules deemed necessary and desirable by the City's Governing Body to make a clear and informative presentation of the financial position of the Utility System.

- B. The reports shall be kept on file in the offices of the Hildale City Recorder and the Colorado City Town Clerk and shall be open to public inspection. The funds and accounts of the Utility System shall be audited annually by a certified public accountant or by a firm of such accountants.

**Section 15. LIABILITY AND INDEMNIFICATION.**

- A. Each City shall assume full responsibility and liability for the maintenance and operation of its Utility System and each shall indemnify and save harmless the other from all liability and expense on account of any and all damages, claims, or actions, including injury to or death of persons arising from any act or accident in connection with the installation, presence, maintenance and operation of the property and equipment of the indemnifying party and not caused in whole or in part by the negligence of the other party; provided that any liability which is incurred by the Utility Board or the Cities through the operation and maintenance of the Utility System pursuant to this Agreement and not covered, or not covered sufficiently, by insurance shall be paid solely from the revenues of the Cities received by the Utility system, and any payments made by the Utility system to satisfy such liability shall become part of the operation and maintenance costs hereunder.
- B. The Cities each hereby find, determine and declare that the Utility Advisory Board, in carrying out and discharging its obligations and responsibilities under this Agreement, is performing and will perform governmental functions on behalf of the Cities. To that end, the Utility Board shall have the benefit of all privileges and immunities to which the Cities are entitled under the laws of the States of Utah and Arizona.
- C. No agreement or obligation contained in this Agreement shall be deemed to be the agreement or obligation of any elected or appointed official, officer, member, agent or employee of either of the Cities or the Utility Advisory Board in his or her individual capacity and none of such officials, officers, members, agents or employees shall be personally liable or subject to any personal liability by reason of their performance of or involvement with any of the agreements and obligations contained in this Agreement.
- D. To the extent permitted by law, each City shall indemnify and hold the other harmless for any loss, cost, damage or claim, including counsel fees and other litigation expenses, if any, arising out of a liability or duty which is the responsibility of the indemnifying party under law or under this Agreement.



- E. The payment obligations of the Cities under this Agreement are several and not joint and shall constitute an obligation of each City payable as an operating expense of its Utility System solely from the revenues and other available funds of such City's portion of the Utility System. In no event shall any of the Cities' payment obligations hereunder constitute a debt or indebtedness of either of the Cities within the meaning of any constitutional or statutory limitation or provision.

**Section 16. INTERESTS OF THE PARTIES.**

The Cities' respective ownership of the Utility Systems are and shall be maintained separate and distinct. The benefits and liabilities related to each system and operation thereof shall accrue to the respective owner of that portion of the Utility System.

**Section 17. RELATIONSHIP TO AND COMPLIANCE WITH OTHER DOCUMENTS.**

- A. It is recognized and agreed to by each of the Cities that in undertaking the acquisition and financing of the Utility System, each City must comply with all licenses, permits, approvals and regulations necessary for such acquisition and the operation of such Utility System.
- B. This Agreement is intended to reflect the mutual intent of the parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any party.
- C. The parties shall work in good faith to implement and resolve details not specified in this Agreement.
- D. Insofar as possible, Utah law shall govern Utility System business management as it is integrated in the Hildale City offices located in the State of Utah.

**Section 18. SEVERABILITY AND CONFLICTS OF INTEREST**

- A. The provisions of this Agreement are severable. Should any part, term, or provision of this Agreement be held by the courts to be illegal or in conflict with any law of the States of Utah or Arizona, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

- B. This agreement may be canceled pursuant to A.R.S. § 38 - 511 in the event of a conflict of interest as described therein. Any cancellation shall be made pursuant to such law while giving as much notice as reasonably possible.
- C. No delay, omission or failure to exercise any right of either party under this agreement shall be construed to be a waiver of any such right or as impairing any such right.

**Section 19. IMMUNITY**

- A. By entering into this Agreement, the Parties do not (and do not intend to) waive any immunity provided to the Parties hereto or their officials, employees, or agents by Title 63G, Chapter 7, *Utah Code Annotated*, known as the *Governmental Immunity Act of Utah*, (the “Immunity Act”), or by other applicable law.
- B. While performing duties under this Agreement, whether inside or outside the employee’s own jurisdiction, each employee shall possess the same immunities and privileges as if the duties were performed within the employee’s own jurisdiction.
- C. Nothing in this Agreement shall be construed as a waiver of any sort, including, but not limited to, sovereign immunity or other defense available to governmental entities in Utah and Arizona, or as a consent to be sued, or as a submission to the jurisdiction of any court.

**Section 20. OBLIGATIONS**

This Agreement shall not relieve any Party of any obligation or responsibility imposed upon it by law and nothing herein shall be construed or give rise to a general obligation or liability of any Party or a charge against its general credit or taxing powers.

**Section 21. FILING**

A copy of this Agreement shall be placed on file in the office of the official record keeper of each Party and shall remain on file for public inspection during the term of this Agreement. In the event of a renewal of this Agreement the official record keeper shall refile the renewed agreement.

**Section 22. GENERAL TERMS**

- A. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same

instrument.

- B. Nothing in this Agreement shall be construed as either limiting or extending the lawful jurisdiction of any Party. The Parties agree that nothing in this Agreement alters or conveys any judicial jurisdiction.
- C. This Agreement contains the entire agreement between the Parties concerning its subject matter and shall not be modified except by written agreement duly executed by the Parties hereto. There are no oral understandings or agreements not set forth herein.

**Section 20. GOVERNING LAW.**

This Agreement is made in the States of Utah and Arizona, under the Constitution and laws of such States and is to be construed pursuant to such laws. Insofar as possible, Utah law shall govern utility business management as it is integrated in the Hildale City offices located in Utah; however, to the extent any records or documents are maintained by Colorado City, such records and documents shall be addressed under Arizona law. Hildale and Colorado City shall cooperate with one another to assist one another in satisfaction and compliance with Utah and Arizona law, respectively.

**IN WITNESS WHEREOF**, the parties hereby agree to carry out the terms of this Agreement.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**HILDALE CITY**

**COLORADO CITY**

\_\_\_\_\_  
Donia Jessop, Mayor  
Hildale City

\_\_\_\_\_  
Joseph Allred, Mayor  
Colorado City

Attest:

Attest:

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City Recorder

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Town Clerk

DRAFT

This Agreement as executed is hereby approved as being in proper form and is compatible with and is within the powers and authority granted under the laws of the State of Utah.

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Joseph Hood  
Hildale Attorney

This Agreement as executed is hereby approved as being in proper form and is compatible with and is within the powers and authority granted under the laws of the State of Arizona.

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Brandon J. Kavanagh  
Mangum, Wall, Stoops & Warden, PLLC  
Colorado City Attorney