



JONES & DEMILLE ENGINEERING, INC.

1535 South 100 West ♦ Richfield, UT 84701 ♦ 435-896-8266 ♦ 435-896-8268

RICHFIELD ♦ PRICE ♦ VERNAL ♦ MANTI ♦ ROOSEVELT ♦ UTAH VALLEY ♦ ST. GEORGE ♦ MONTICELLO

STANDARD TERMS AND CONDITIONS

I. SCOPE

Jones & DeMille Engineering, Inc. ("JD") agrees to perform the services described above which incorporates these terms and conditions. JD's services shall be provided consistent with and limited to the standard of care applicable to such services, which is that JD shall provide its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances. Unless modified in writing by the parties hereto, the duties of JD shall not be construed to exceed those services specifically set forth in the scope of services. These terms and conditions, when executed by Client, shall constitute a binding agreement on both parties (hereinafter the "Agreement").

II. COMPENSATION

Client agrees to pay for the services in accordance with the compensation provisions in the Work Order and Agreement. Payment to JD will be made within 30 days after the date of billing. Interest on the unpaid balance will accrue beginning on the 31st day at the maximum interest rate permitted by law.

Time-related charges will be made in accordance with the billing rate referenced in the proposal or Agreement. Direct expenses and subcontractor services shall be billed in accordance with the proposal or compensation exhibit attached to this Agreement. Otherwise, JD's standard billing rates shall apply.

III. RESPONSIBILITY

JD is employed to render a professional service only, and any payments made by Client are compensation solely for such services rendered and recommendations made in carrying out the work. JD shall perform the services in accordance with generally-accepted engineering practices and standards in effect when the services are rendered. JD does not expressly or impliedly warrant or guarantee its services.

In performing construction management services, JD shall act as agent of Client. JD's review or supervision of work prepared or performed by other individuals or firms employed by Client shall not relieve those individuals or firms of complete responsibility for the adequacy of their work.

The presence of JD's personnel at a construction site, whether as on-site representative, resident engineer or construction manager, shall be for the sole purpose of determining that the Work is generally proceeding in conformance with the intent of the project specifications and contract documents and does not constitute any form of guarantee or assurance with respect to contractor's performance. JD shall have no responsibility for the contractor's means, methods, techniques, sequences, for safety precautions and programs incident to the contractor's work, or for any failure of contractor to comply with laws and regulations applicable to performing its work.

IV. ATTORNEYS' FEES

In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation.

V. SUBCONTRACTS

JD shall be entitled, to the extent determined to be appropriate by JD, to subcontract any portion of the Work to be performed under this Agreement.

VI. ASSIGNMENT

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. The Agreement is not to be assigned by either Client or JD without the prior written consent of the other.

VII. INTEGRATION

These terms and conditions represent the entire understanding of Client and JD as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered, except in writing signed by both parties, provided further that any terms and conditions in any task order or purchase order issued in connection or under the Agreement which are inconsistent with the Agreement are deemed null and void.

VIII. CHOICE OF LAW/JURISDICTION

This Agreement shall be administered and interpreted under the laws of the state of Utah. Jurisdiction of litigation arising from the Agreement shall be in the state of Utah.

IX. SEVERABILITY

If any part of the Agreement is found unenforceable under applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with such laws, but the remainder of the Agreement shall be in full force and effect.

X. NO BENEFIT FOR THIRD PARTIES

The services to be performed by JD hereunder are intended solely for the benefit of Client, and no right or benefit is conferred on, nor any contractual relationship intended or

established with any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely on JD's performance of its services hereunder.

XI. WORK PRODUCT

JD and Client recognize that JD's work product submitted in performance of this Agreement is intended only for the Client's benefit and use. Change, alteration, or reuse on another project by Client shall be at Client's sole risk, and Client shall hold harmless and indemnify JD against all losses, damages, costs and expenses, including attorneys' fees, arising out of or related to any such unauthorized change, alteration or reuse.

XII. LIMIT OF LIABILITY

To the fullest extent permitted by law, the total liability, in the aggregate, of JD and JD's officers, directors, partners, employees, agents and consultants, or any of them, to Client and anyone claiming by, through or under Client, for any and all injuries, losses, damages and expenses, whatsoever arising out of, resulting from, or in any way related to this Agreement from any cause or causes, including, but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or warranty, express or implied, of JD or JD's officers, directors, partners, employees, agents and consultants, or any of them, shall not exceed the total amount of compensation for services.

XIII. SUSPENSION OF WORK

Work under this Agreement may be suspended as follows:

1. **By Client.** By written notice to JD, Client may suspend all or a portion of the Work under this Agreement if unforeseen circumstances beyond Client's control make normal progress of the Work impracticable. JD shall be compensated for its reasonable expenses resulting from such suspension, including mobilization and de-mobilization. If suspension is greater than 30 days, then JD shall have the right to terminate this Agreement in accordance with Article XIV, Termination of Work.

2. **By JD.** By written notice to Client, JD may suspend the Work if JD reasonably determines that working conditions at the site (outside JD's control) are unsafe, or in violation of applicable laws, or for other circumstances not caused by JD that are interfering with the normal progress of the Work. JD's suspension of Work hereunder shall be without prejudice to any other remedy of JD at law or equity.

XIV. TERMINATION OF WORK

This Agreement shall be terminated as follows:

1. **Client** (a) for its convenience on 30 days' notice to JD, or (b) for materially breaches of this Agreement through no fault of Client and JD neither cures such material breach nor makes reasonable progress toward cure within 15 days after Client has given written notice of the alleged breach to JD.

2. **By JD** (a) for cause, if Client materially breaches this Agreement through no fault of JD and Client neither cures such material breach nor makes reasonable progress toward cure within 15 days after JD has given written notice of the alleged breach to Client, or (b) upon 5 days' notice if Work under this Agreement has been suspended by either Client or JD in the aggregate for more than 30 days.

3. **Payment upon Termination.** In the event of termination, JD shall perform such additional work as is reasonably necessary for the orderly closing of the Work. JD shall be compensated for all work performed prior to the effective date of termination, plus work required for the orderly closing of the Work. Except for termination of JD by Client for cause, JD shall also receive a termination fee equal to 15 percent of the total compensation yet to be earned under existing authorizations at the time of termination.

XV. CONSTRUCTION OBSERVATION

If expressly included in the services, JD's services during construction shall be limited to observation and testing of construction materials. JD shall not be responsible for constant or exhaustive inspection of the work, the means and methods of construction or the safety procedures employed by Client's contractor. Performance of construction observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the contractor's work may occur. Client shall hold its contractor solely responsible for the quality and completion of the project, including construction in accordance with the construction documents. Any duty hereunder is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees, shall notify JD at last 24 hours in advance of any field tests and observations required by the construction documents. Client will indemnify and hold JD harmless for its failure to retain JD's services according to written reports, plans and specifications.

XVI. NOTICES

All notices required under this Agreement shall be by personal delivery, facsimile or mail to the JD Project Manager and to the person authorized on behalf of the Client, and shall be effective upon delivery to the addresses stated in this Agreement.

XVII. HOLD HARMLESS

JD's commitments as set forth in this Agreement are based on the expectation that all of the services described in this Agreement will be provided. In the event Client later elects to reduce design professional's scope of services, Client hereby agrees to release, hold harmless, defend and indemnify JD from any and all claims, damages, losses or costs associated with or arising out of such reduction in services.

DS
DR

Engineer initials

DS
WMM

Client initials