

County Contract No. \_\_\_\_\_

**AGREEMENT  
BETWEEN  
Kilgore Companies LLC  
AND  
WEBER COUNTY**

*Highway 162 Overlay Project*

\*\*\*\*\*

THIS AGREEMENT is made and entered into as of the 31<sup>st</sup> day of May, 2022, by and between WEBER COUNTY (COUNTY), a body corporate and politic of the State of Utah, and Kilgore Companies LLC (CONTRACTOR), a limited liability company authorized to do business in Utah, Taxpayer Identification No. \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, COUNTY desires to obtain roadway construction services for the Highway 162 Overlay Project; and

WHEREAS, CONTRACTOR has submitted a proposal to provide construction and related services for such mill and overlay roadway construction; and has been chosen through a competitive process to contract with COUNTY; and

WHEREAS, COUNTY desires to accept said proposal and to receive the services of CONTRACTOR as set forth in said proposal;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

**ARTICLE I**

**SERVICES OF THE CONTRACTOR**

A. CONTRACTOR shall perform such services as are specified by this contract and as are specified by the scope of services set forth in Exhibit A to this contract, attached hereto and incorporated herein. In performing said services, CONTRACTOR shall follow practices consistent with acceptable professional and technical standards for work of this nature.

B. CONTRACTOR hereby agrees to furnish those services necessary to complete the scope of services specified in this contract. All said services shall be performed by CONTRACTOR or by CONTRACTOR's associates, employees, or subcontractors under the personal supervision of the Project Manager, designated in Article I, Section C, or such other qualified person as shall be designated by CONTRACTOR and approved in writing by COUNTY.

C. Kevin Luke will perform or supervise the project on behalf of CONTRACTOR as Project Manager. Should (s)he be unable to complete said responsibility for any reason, COUNTY reserves the right to terminate this contract in the event (s)he is not replaced by a person which COUNTY finds satisfactory.

D. CONTRACTOR has, or will secure at its own expense, the qualified personnel required to perform the services specified by this contract.

E. Except as may be delineated in Exhibit A, or except as allowed by COUNTY's Representative in writing, none of the services specified by this contract shall be subcontracted.

F. During the contract period, CONTRACTOR shall attend such meetings and public hearings and shall provide such advice as may be required as described in Exhibit A.

G. All materials developed, prepared, completed, or acquired by CONTRACTOR during the performance of the services specified by this contract, including all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports,

in both electronic and non-electronic format, shall become the property of COUNTY and shall be delivered to COUNTY during or at the end of the contract period. All such materials shall not be released by CONTRACTOR at any time without the prior written approval of COUNTY's Representative. It is understood and agreed that such materials are to be prepared exclusively for work required under this agreement, and that their use on other projects may not be appropriate. Therefore, COUNTY agrees that its use of said materials on other projects shall be at its own risk unless prior thereto CONTRACTOR has given its written approval for such use.

H. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the project, CONTRACTOR has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, CONTRACTOR makes no warranty that COUNTY's actual project costs, financial aspects, economic feasibility or schedules will not vary from CONTRACTOR's opinions, analyses, projections, or estimates. Such variations will be resolved by negotiation between the parties and amendment to this agreement, if needed.

## ARTICLE II

### MANAGEMENT AND COORDINATION

In order that COUNTY may maintain coordination with the services performed as specified by this contract, it is hereby agreed that the services performed by CONTRACTOR hereunder shall be coordinated with COUNTY's Representative, who will be either the County Engineer (currently Gary Myers, P.E.) or the County Engineer's designee.

**ARTICLE III**

**SERVICES OF THE COUNTY**

A. The representative designated above shall serve as the sole intermediary between COUNTY and CONTRACTOR. Said representative shall receive and examine documents submitted by CONTRACTOR and shall render any needed decisions on COUNTY policies or procedures in a prompt manner so as to prevent unreasonable delay in the progress of work to be performed by CONTRACTOR under this agreement.

B. COUNTY shall without charge furnish to or make available for examination or use by CONTRACTOR, as it may request, all available pertinent information and documents related to the project which COUNTY has available and may legally disclose.

C. COUNTY shall not be responsible for discovering deficiencies in the technical accuracy of CONTRACTOR's services. CONTRACTOR shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in COUNTY-furnished information.

**ARTICLE IV**

**(RESERVED)**

**ARTICLE V**

**TIME SCHEDULE**

A. CONTRACTOR shall commence its services as specified by this contract upon receipt from COUNTY of written notice to proceed. CONTRACTOR shall meet set milestones and complete its work hereunder within the time limits set forth in Exhibit D, except where written notification of variance is received from COUNTY's Representative or except in the

event of the occurrence of unforeseeable circumstances beyond the reasonable control of CONTRACTOR.

B. It is hereby agreed that CONTRACTOR is not required to provide full-time service throughout said period. However, during the entire contract period, CONTRACTOR shall commit necessary resources as deemed necessary, within reason, to keep to said schedule.

**ARTICLE VI**  
**COMPENSATION**

A. Payment to CONTRACTOR for its services provided under this contract shall become due upon completion of the same. At the end of each 30-day period during CONTRACTOR's performance hereunder, CONTRACTOR may request a progress payment based upon work performed and services rendered within that 30-day period. COUNTY shall pay to CONTRACTOR the requested payment, if approved, or the undisputed portion thereof within sixty (60) days of the progress payment request. Final payment shall be made when CONTRACTOR has submitted the final work product to COUNTY in a manner consistent with the contract. If COUNTY fails to make a payment within the time specified above, there shall be added to such payment, interest at a rate equal to the percentage rate earned by the County Treasurer on such funds, compounded monthly, commencing on the first day after said payment is due and continuing until payment is made. Interest shall be deemed to be additional to any compensation due CONTRACTOR for services provided pursuant to this contract.

B. The payment process described above shall begin only upon submission by CONTRACTOR, to COUNTY's Representative, of an invoice or billing signed by the CONTRACTOR's Project Manager, including support documents. The invoice or billing may be a hard copy with a wet signature or an electronic document signed digitally (e.g., VeriSign).

The invoice or billing shall include an invoice number. Any request for a progress payment shall be denominated as such and shall include the invoice or billing, with support documents, detailing the bill and giving a brief statement of accomplishments and status.

C. The parties agree that the compensation COUNTY shall pay CONTRACTOR for performance of the services described in the "Scope of Work" found in Exhibit A shall be made as follows:

COUNTY shall pay CONTRACTOR on a materials basis as specified in the bid item list and as measured and agreed upon by the CONTRACTOR and COUNTY representative. The bid item list is included as Exhibit B.

## ARTICLE VII

### INSURANCE AND INDEMNIFICATION

A. CONTRACTOR shall accept full responsibility for the payment of premiums for unemployment insurance and workers' compensation, as well as income tax and social security deductions and any other taxes or payroll deductions required by law for its employees who are performing services by this contract.

B. CONTRACTOR shall procure and maintain the insurance policies required in this article from an insurance company authorized to write casualty insurance in the State of Utah, to protect itself and COUNTY from all claims including, but not limited to, bodily injury, death, or property damage which may arise from performance under the contract. All insurance policies must be approved and accepted by COUNTY, and excepting the professional liability and workers' compensation policies, will name Weber County as additional insured, and will be issued by a surety authorized to do business in the State of Utah and be rated with an A- or better rating in the most current edition of *Best's Key Rating Guide*.

C. CONTRACTOR shall not commence performance under this agreement until it has obtained all insurance required by this article and filed a certificate of insurance or certified copy of insurance policy with COUNTY. Each insurance policy shall contain a clause providing that the insurance company will not cancel coverage without thirty (30) days prior written notice to COUNTY of intention to cancel. The amount of such insurance coverage will not be less than the following:

1. Workers' compensation statutory limits as required by the Workers' Compensation Act of the State of Utah and Employers Liability limits \$1,000,000 per occurrence.
2. Commercial General Liability insurance in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 aggregate.
3. Professional Liability insurance in an amount of not less than \$1,000,000.
4. Automobile Liability insurance in the minimum amount of \$1,000,000 per occurrence with no deductible. "Any Auto" coverage is required.

Excluding workers' compensation and professional liability coverages, CONTRACTOR's insurance coverage shall be a primary insurance. COUNTY's self-insurance or insurance shall be in excess of CONTRACTOR's insurance and shall not contribute with it. CONTRACTOR's failure to comply with policy reporting provisions shall not affect coverage provided to COUNTY, its officers, officials, employees, or volunteers.

D. CONTRACTOR agrees to defend, indemnify, and hold harmless COUNTY, its officers, employees, and agents from and against any and all liability, loss, expense (including reasonable attorney's fees), or claim, arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury

or damage are caused by or result from the negligent or intentional acts, errors, and/or omissions of the CONTRACTOR, its agents, employees, and/or subcontractors. CONTRACTOR shall not indemnify for default when the delay is beyond the control and without the fault and negligence of CONTRACTOR, including but not restricted to, changes in the scope of work, strikes, availability of materials, acts of God or of the public enemy, acts of COUNTY or its representatives or agents, and acts of any other consultant and/or contractor in the performance of a contract with COUNTY. CONTRACTOR's obligation to indemnify COUNTY is not limited or waived in any way by compliance or non-compliance with the insurance requirements of this agreement. CONTRACTOR will be required to indemnify COUNTY to the fullest extent allowed by law, regardless of whether CONTRACTOR has sufficient insurance to cover this obligation.

E. The parties agree that for purposes of this agreement, CONTRACTOR, its officers, agents, and employees are not to be regarded as COUNTY employees, and that CONTRACTOR is an independent contractor in all respects.

## **ARTICLE VIII**

### **REMEDIES**

A. Time for Completion. The date of beginning and the time for completion of the specified work are essential conditions of this contract. If CONTRACTOR shall fail to comply with the time schedule set forth in Article V and Exhibit D, or any extension of time granted by COUNTY, then CONTRACTOR shall be in default, unless the failure is beyond the control and without the fault and negligence of CONTRACTOR. If CONTRACTOR defaults, then COUNTY shall be entitled to the recovery of direct damages, if any, resulting from the default, in addition to any other remedies granted by this contract.

B. Correction of Work. CONTRACTOR shall promptly replace and/or re-execute work rejected by COUNTY for failure to comply with this contract, without expense to COUNTY. However, COUNTY shall inform CONTRACTOR of any decisions concerning adequacy of the work within a reasonable time.

C. Disputes. If CONTRACTOR disputes COUNTY's compliance with any term of this contract, CONTRACTOR shall present its claim in writing to COUNTY within ten (10) days of learning of the act or condition that created the dispute, or the claim shall be deemed waived by CONTRACTOR. Notice of such claim need not be specific in detail but shall be sufficient to identify the character and scope of the claim. COUNTY shall consider said claim and render its decision thereon in writing not later than ten (10) days following the date notice of said claim was received by COUNTY. In the meantime, CONTRACTOR shall proceed with the work as directed by COUNTY. If CONTRACTOR is aggrieved by the decision of COUNTY upon its claim, CONTRACTOR shall nevertheless comply therewith and complete the work required thereunder, and under this agreement. By giving timely notice of its claim according to this paragraph, CONTRACTOR shall preserve its claim for future proceedings or litigation, if necessary. However, the existence of any dispute shall not serve as reason to terminate or delay the work required under this agreement.

## ARTICLE IX

### CHANGES

COUNTY may, at any time by written order, and without notice to the sureties, if any, make changes in the concept of the project of this contract, if within its general scope. If such changes cause an increase or decrease in CONTRACTOR's cost of, or time required for performance of the contract, an equitable adjustment in price or time will be made and the

contract modified in writing accordingly. The equitable adjustment shall be based upon a negotiated price for the change required. All changes shall be set forth in writing, signed by all parties prior to the performance thereof and any changes in price shall be added to or subtracted from the price hereof and billed to COUNTY in accordance with the provisions of Article VI hereof. Except as provided in this contract, no charge for any extra work or materials will be allowed or paid. In determining the equitable adjustment to be paid, the books and records of CONTRACTOR pertaining to this agreement shall be made available to COUNTY.

## ARTICLE X

### TERMINATION

A. COUNTY shall have the right to terminate this agreement in whole, or from time to time, in part, for COUNTY's convenience or because of CONTRACTOR's failure to fulfill the contract obligations. COUNTY shall terminate by delivering to CONTRACTOR a Notice of Termination specifying the extent to which performance of services under this contract is terminated, and the date upon which such termination becomes effective. In the event the agreement is terminated by COUNTY prior to full performance by CONTRACTOR, CONTRACTOR shall be paid for services rendered to the date of termination based upon a percentage of completion of the full performance of this agreement.

B. After receipt of a written Notice of Termination for convenience, CONTRACTOR shall:

1. Stop work under the contract upon the date and to the extent specified in the Notice of Termination;

2. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not specifically terminated;

3. Transfer to COUNTY, and deliver to COUNTY, work in process, completed work, completed or partially completed plans, drawings, information and other property (including all electronic files and support files) which would be required to be furnished to COUNTY if the contract had been completed;

4. Terminate all orders and subcontracts to the extent that they relate to performance of work terminated by the Notice of Termination;

5. Assign to COUNTY, in the manner, at the times, and to the extent directed by COUNTY, all of the right, title, and interest of CONTRACTOR in any orders and subcontracts so terminated, in which case COUNTY shall have a right, in its discretion, to settle and pay any or all claims arising out of the termination of such orders and subcontracts;

6. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval and ratification of COUNTY to the extent CONTRACTOR may require, which approval or ratification shall be final for all purposes of this clause.

C. After receipt of a written Notice of Termination, CONTRACTOR shall submit to COUNTY its termination claim no later than sixty (60) days after the termination of this contract, unless extensions in writing are granted by COUNTY. Upon failure of CONTRACTOR to submit its termination claim within the time allowed, COUNTY may

determine, on the basis of information available, the amount, if any, due to CONTRACTOR by reason of the termination and shall thereupon pay to CONTRACTOR the amount so determined.

D. In the event of termination for convenience, the amounts due CONTRACTOR from COUNTY shall be determined as follows:

1 There shall be included all costs and expenses reimbursable in accordance with this contract, not previously paid to CONTRACTOR for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of, or as directed by, COUNTY; and

2 There shall be included so far as not included under (1) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, which are properly chargeable to the terminated portion of the contract.

E. With the exception of work completed prior to receipt of the Notice of Termination, in no event shall all termination claims and payments described herein exceed the value of work left to be completed as of the date of receipt of the Notice of Termination.

## ARTICLE XI

### MISCELLANEOUS

A. No Officer or Employee Interest. No officer or employee of COUNTY shall have any pecuniary interest, direct or indirect, in this agreement or the proceeds thereof. No officer or employee of CONTRACTOR nor any member of their families shall serve on a COUNTY board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises CONTRACTOR's operations, or authorizes funding to CONTRACTOR. No officer, employee, or member of the governing body of COUNTY, or of

the locality or localities in which the project governed by this contract takes place, shall (1) participate in any decision relating to this contract which affects his or her personal interest or the interest of any corporation, partnership, or association in which (s)he is, directly or indirectly, interested, or (2) have any interests, direct or indirect, in this contract or the proceeds thereto.

B. Assignability. CONTRACTOR shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of COUNTY.

C. Interest of CONTRACTOR. CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed as specified in this contract. CONTRACTOR further covenants that in the performance of said services no person having any conflict of interest shall be employed.

D. Equal Employment Opportunity. CONTRACTOR, by entering into this agreement, or any person acting in its behalf, agrees that it shall not, because of race, color, sex, religion, age, disability, marital status, sexual orientation, ancestry, or national origin, discriminate in the engagement or employment of any professional person or any other person qualified to perform the services required under this agreement or any subagreement executed in the furtherance thereof.

E. Contingent Fees. CONTRACTOR warrants that no person or company has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees; nor has CONTRACTOR paid or agreed to pay any person, company, corporation, or firm, other than a bona fide employee, any fee or commission resulting from award of this contract. For any

breach or violation of this provision, COUNTY shall have the right to terminate this agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any other damages and shall be responsible for reporting the details of such breach or violation to the proper legal authorities where and when appropriate.

F. Affidavit. A sworn affidavit may be required to be submitted by each officer, employee, or agent of CONTRACTOR who has been in contact or communicated with any officer, agent, or employee of COUNTY during the past calendar year concerning the provision of these services. The affidavit shall contain the following statement.

"I do solemnly swear that neither I, nor to the best of my knowledge, any member of my firm or company, have either directly or indirectly restrained free and competitive bidding for these services by entering into any agreement, participating in any collusion, or otherwise taking any action unauthorized by the governing body of the County, or in violation of applicable law."

G. Amendments. Unless otherwise provided for in this agreement, all changes, including any increase or decrease in the amount of CONTRACTOR's compensation, time schedule, or scope of services, which are mutually agreed upon by and between COUNTY and CONTRACTOR, shall be incorporated in written amendments to this contract and signed by the parties hereto. No alteration or variation in the terms of this agreement shall be valid unless made in writing as required herein.

H. Default. If either party defaults in the performance of the agreement or any of its covenants, terms, conditions, or provisions, the defaulting party shall pay all costs and expenses which may arise or accrue from enforcing the agreement or from pursuing any remedy provided thereunder.

## ARTICLE XII

## EXHIBITS AND SPECIAL PROVISIONS

A. Exhibits Included:

1. Exhibit A, Scope of Work.
2. Exhibit B, Bid Tab
3. Exhibit D, Schedule

B. Total Agreement: This Agreement, (together with the exhibits identified above) constitutes the entire agreement between COUNTY and CONTRACTOR and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.





# LeGrand Johnson Construction Co.

P.O. BOX 248 PHONE (435) 752-2000 FAX (435) 752-2968 LOGAN, UTAH 84323-0248

## **Exhibit A**

### **Scope of Work**

This project consists of milling 2" of existing asphalt for the full roadway width on Highway 162; from Wolf Creek Drive to the Northwest ending after approximately .98 miles near the bridge near River Drive. After milling, the roadway will be replaced with 2.5" thick new asphalt, paint striping, and shouldering for the edges of the new asphalt along non-curb and gutter areas.

During the duration of the project, traffic control flagging will divert traffic around the work areas to allow traffic to run in both directions.

