

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of February 4, 2014 ("Effective Date") between City of Gillette ("Owner") whose address is 201 East 5th Street, Gillette WY 82716 and Kadrmas, Lee & Jackson, Inc., ("Engineer") whose address is 640 N. HWY 14/16 Unit K, Gillette WY 82716. The Engineer agrees to provide the services described below to Owner for **2013 Water Main Replacement Project** ("Project"). The services Engineer shall provide, or cause to be provided, are further defined in attached Exhibit A – Engineer's Services and are generally described as follows: **Provide full-time construction administration for the 2013 Water Main Replacement Project. Services shall include survey RPR, and construction administration services for the project.** Owner shall provide, or cause to be provided, the payment for these services as set forth in attached Exhibit B – Payment for Services.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 10.01.

2.01 Payment Procedures

- A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.
- B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

- A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

- B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

4.01 Termination

- A. The obligation to provide further services under this Agreement may be terminated
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
 - b. By Engineer:
 - 1) Upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a provider of professional services; or
 - 2) Upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 - 2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.
- B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

- A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement

and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its engineers may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
- B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
- C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.
- D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.
- E. ~~The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2007 Edition).~~
- F. All project documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.
- G. To the fullest extent permitted by law, Owner and Engineer agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist engineers or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental

Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 KL&J Additions to EJCDC E-520

- A. The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its officers, directors and employees (collectively, Owner) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Engineer's negligent performance of professional services under this Agreement and that of its sub-Engineer's or anyone for whom the Engineer is legally liable. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees and sub-Engineer's (collectively, Engineer) 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 Contractor's, sub-Contractor's or Engineer's or anyone for whom the Owner is legally liable. Neither the Owner nor the Engineer shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
- B. The Owner shall not reuse or make any modification to the project documents without Engineer's prior written authorization. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer's officers, directors, employees and sub-engineers (collectively) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the project documents by the Owner or any person or entity that acquires or obtains the project documents from or through the Owner without Engineer's written authorization.
- C. In the event of a dispute arising out of or relating to the agreement or the services to be rendered hereunder, both parties hereby agree to (1) attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party, (2) if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by both parties, and (3) if the dispute or any issues remain unresolved after the first two steps, either party may seek to have the dispute resolved by a court of competent jurisdiction.
- D. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Owner nor the Engineer, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Owner and the Engineer shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
- E. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents. Each Party may change its designated individual(s) at any time by written notice to the other Party.

9.01 Total Agreement

- A. This Agreement (together with any expressly incorporated exhibits and appendices), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

10.01 Payment and Schedules

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
 - I. In accordance with Exhibit B – Payment of Services.
- B. The Engineer's compensation is conditioned on the time to complete the services by September 1, 2014. Should the time to complete services be extended beyond this period, total compensation to Engineer may be appropriately adjusted. Engineer is authorized to begin rendering services as of the Effective Date.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: City of Gillette

ENGINEER: Kadrmas, Lee & Jackson, Inc.

By: _____
(signature)

By: Mark Anderson
(signature)

By: John Opseth
(printed or typed name)

By: Mark Anderson
(printed or typed name)

Title: Mayor

Title: PA Leader

Date Signed: _____

Date Signed: 1/20/14

Attest: _____
(signature)

Witnessed By: Liz Hunter
(signature)

(printed or typed name)

Witnessed By: Liz Hunter
(printed or typed name)

Title: Office Manager

Address for giving notices:

Address for giving notices:

City West Building

KLJ

611 N. Exchange Avenue (PO Box 3003)

640 N. HWY 14/16 Unit K

Gillette, WY 82717

Gillette, WY 82716

Designated Representative:

Designated Representative:

Attn: Steven Peterson, PE

Attn: Liz Hunter

Title: Utilities Engineering Manager

Title: Office Manager

Phone Number: 686-5262

Phone Number: 682-9500

Facsimile Number: 686-6564

Facsimile Number: 682-9510

E-Mail Address: stevenp@gillettewy.gov

E-Mail Address: Liz.hunter@kljeng.com