

## **AGREEMENT OF PERFORMANCE AND COMPLETION**

This Agreement is made this 23<sup>rd</sup> day of January, 2014, by and between the City of Gillette, Wyoming, a municipal corporation and City of the First Class, hereinafter City, of 201 East Fifth Street, Gillette, Wyoming, 82716 and Raymond F. Elsner and Susan E. Elsner, husband and wife of 2300 Jane Court, Gillette, WY 82718, hereinafter called "Elsners." The following are all of the agreed terms:

WHEREAS; The Elsners and the City reached an agreement for conveyance to the City of three permanent waterline easements on or about October 4, 2011, and the Elsners conveyed the said easements to the City on the 6<sup>th</sup> and 7<sup>th</sup> of October 2011 for \$18,500.00 in cash (the receipt of which is hereby acknowledged) and other consideration as stated in the attached correspondence of October 4, 2011 to the Elsners which is attached hereto as Exhibit "A."

And WHEREAS; the City and its contractors have been in construction of waterlines upon the granted easements and are now approaching completion of those construction activities.

And WHEREAS; the City and the Elsners desire to specify all the remaining performances and obligations of the parties and the dates for completion of each of those performances so that the completion of the project and the obligations thereof may be identified, performed, and discharged, and a release from further obligation may be obtained.

The parties therefore agree and covenant that the following listed performances are, unless reservation is specifically stated herein, the only remaining performances required of the City in connection with its construction activities on the Elsner property[ies]:

### **REMAINING OBLIGATIONS OR PERFORMANCES**

It is understood and acknowledged that this list is exhaustive. It includes all remaining performances and obligations of any kind of the City with regard to or connected to its acquisition construction, demolition, reconstruction, reclamation activities or activities of any kind on Elsner's property and concludes all contractual obligations to the Elsners whatsoever;

- 1.) In lieu of any obligation on the part of the City or its agents or contractors to provide any materials for or to in any way repair, reclaim or reconstruct or work on, Elsners' driveway or parking area[s] adjacent to Swanson Road the City will pay \$2000.00 as damages and consideration generally for this

agreement. Payment will be made within 10 days of the execution of this agreement.

- 2.) On or before, June 1, 2014, the City will have metal valve enclosures constructed covering all above ground water pipeline "valves" on the Elsner property. These enclosures shall be of the triangle type steel post guardrail assembly customarily used by the CITY for these applications, as generally described in Exhibit "A".
- 3.) The City will, at its expense, survey and replace any and all property corner pins removed during construction. These shall be replaced with durable metal stakes and caps of a type standard in the survey industry. This performance shall be completed by March 1, 2014.
- 4.) Some or all of the City's fire hydrants may, after survey, prove to be installed outside of the City's permanent easement. In that case, the City agrees to move the fire hydrant which is located furthest east (toward Schoonover Road) back into the easement and to appropriately reclaim the surface after the move. The other hydrant[s] may remain in their presently installed positions and Elsners will grant 10' x 10' permanent easement[s] for their locations at a rate of \$1.50 per square foot. This item shall be completed by performance and payment by June 1, 2014.
- 5.) The City agrees that it will not release its construction contractor from its bond insofar as that bond applies to Elsners' reclamation work until the completion of necessary reclamation has been determined by the Wyoming Department of Environmental Quality and that entity has closed its permit and accepted the improvements on the Elsner property.
- 6.) At the two locations identified in red on the attached map (Exhibit "B") the City will re-grade the drainage to foster positive water flow. In this performance the City will perform topsoil replacement, re-seeding and erosion control to industry standards. This item shall be accomplished by June 1, 2014.
- 7.) The City will remove and dispose of the asphalt debris left after its construction by May 1, 2014.
- 8.) There are multiple areas of impact on the Elsner property which have not had reclamation concluded. These include areas around fences, hydrants, valves and other surface structures. The City agrees to complete topsoil replacement, re-seeding with rangeland grass mix, and mulch placement by June 1, 2014.
- 9.) By April 15, 2014 the City will move the present fence at the area of Schoonover Road and the Elsner property to the surveyed boundary between the Elsner's property and the Schoonover Road right of way as shown in

green on the attached Exhibit "B". The gate to the Elsner property will be re-installed at a location chosen by Elsners.

- 10.) The City agrees to install an additional, standard one inch service saddle and curb stop on its 12" service line at a location on the Elsner property approximately 150 feet west of the west end of Schoonover Road as generally shown in blue on Exhibit "B" attached hereto. This item will be completed on or before April 15, 2014. Exhibit "C" is a representation of the general design of the curb stop.
- 11.) For all items listed the Elsners promise to provide prompt and reasonable access to both easement and non-easement locations on their property as may be necessary for the City and/or its chosen agents and contractors to accomplish the performances and obligations stated herein.
- 12.) The parties agree that any controversy regarding completion or adequacy of the above listed remaining performances shall be submitted by the complaining party to binding arbitration, by a single, independent arbitrator who is a member of the Wyoming Bar Association appointed by a district judge of the 6<sup>th</sup> Judicial District, Gillette, WY. Each party will bear their own costs in the arbitration and the cost of the arbitrator will be equally divided between the parties.

### **ELSNER'S RESERVATIONS OF RIGHTS**

The parties have been unable to agree upon the following performances and or obligations to which Elsners contend they are entitled. The City disagrees with their contentions. The Elsners now therefore reserve their rights to contend in appropriate judicial proceedings that the following performances and/or obligations or compensation for them are still due them from the City or its agents:

- A. The parties assign no items to this section.

### **SETTLEMENT AND RELEASE**

As to all other issues not addressed in the Sections above entitled REMAINING OBLIGATIONS OR PERFORMANCES and ELSNER'S RESERVATIONS OF RIGHTS the following Settlement and Release Agreement shall apply:

NOW THEREFORE in consideration of all the provisions of this Agreement of Performance and Completion the Elsners, for themselves and their heirs successors and assigns do hereby release, acquit, and forever discharge the City of Gillette, and all of its agents, officers, employees and officials, successors and assigns from any and all actions, causes of actions, claims and demands, known or unknown, damages, costs, expenses,

compensation, performances and obligations including claims for property damage and personal injury on account of or in any way growing out of the City's acquisition of its waterline easements or its construction or other activities on them or on Elsners' adjacent lands and any contractual obligations or performances except as Elsners' rights are specifically reserved herein.

The undersigned Elsners further declare and represent that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this contract contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

The parties have agreed to settle, according to the terms of this agreement, all of the issues and claims between them, whether asserted or not, arising out of the negotiation and grants of easement as identified herein and any construction reclamation or other activities of the City or its agents on Elsners' property within or outside the granted easements.

It is understood and agreed that this settlement is the compromise of various claims that the City may believe are doubtful and the agreement made is not to be construed as an admission of liability or responsibility on the part of the City.

This above released is accepted and agreed this 23 day of January, 2014.

RAYMOND F. ELSNER

Raymond F. Elsner

Jan 23 2013  
DATED

STATE OF WYOMING     )  
  ) ss.  
County of Campbell     )

The above and foregoing instrument was acknowledged before me by, Raymond F. Elsner, this 23<sup>rd</sup> day of January, 2014.

Witness my hand and official seal.

My Commission Expires:

Tracy Lynn Olson  
Notary Public

SUSAN E. ELSNER

Susan E. Elsner

Jan 23, 2013  
DATED

STATE OF WYOMING     )  
  ) ss.





County of Campbell )

The above and foregoing instrument was acknowledged before me by, Susan E. Elsner, this 23<sup>rd</sup> day of January, 2014.

Witness my hand and official seal.

My Commission Expires:

10-15-16

Tracy Lynn Olson  
Notary Public

CITY OF GILLETTE:

\_\_\_\_\_  
John Opseth, Mayor

\_\_\_\_\_  
DATED

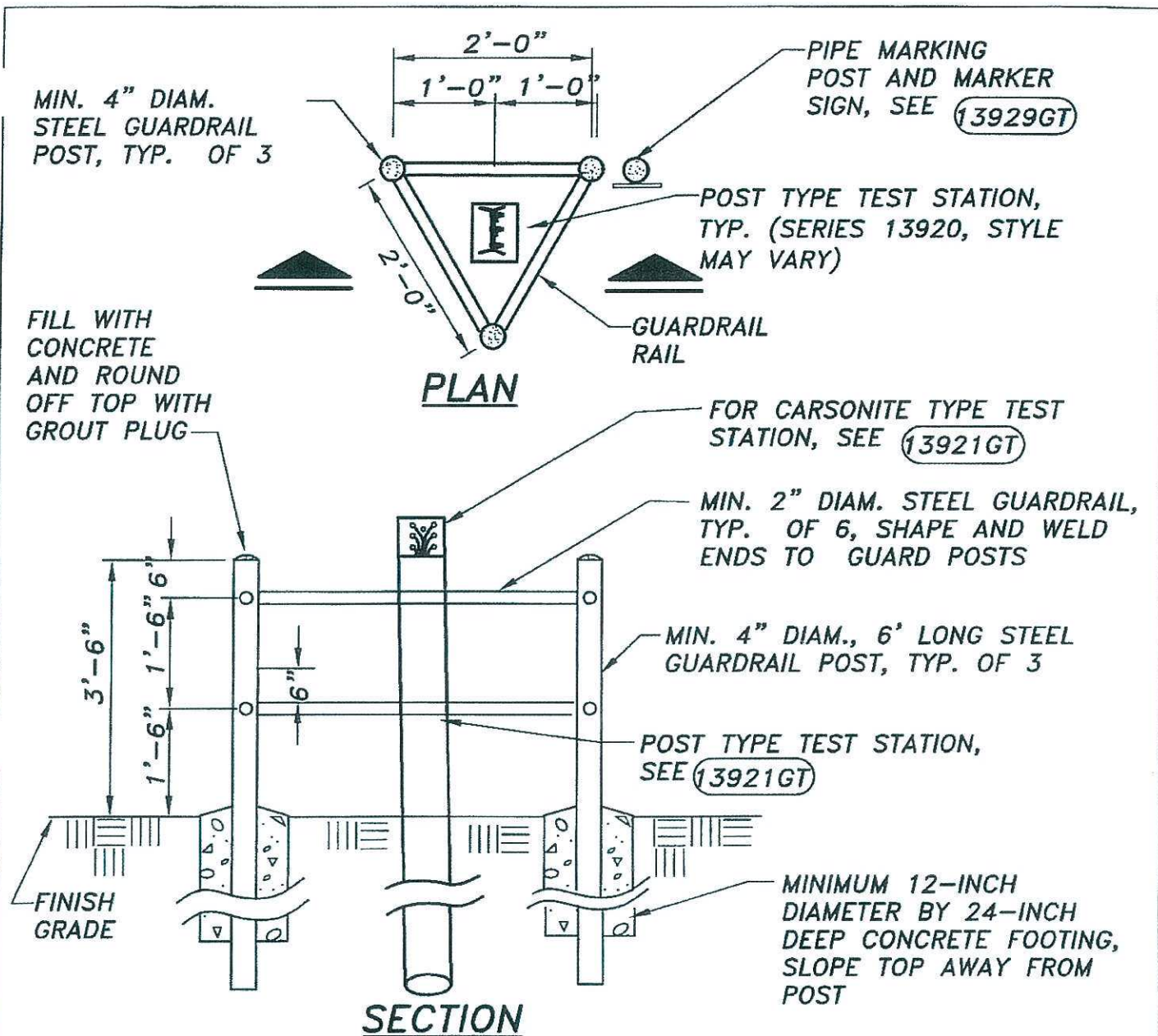
STATE OF WYOMING     )  
                                      ) ss.  
County of Campbell     )

The above and foregoing instrument was acknowledged before me by, John Opseth, Mayor, for the City of Gillette, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Witness my hand and official seal.

My Commission Expires:

\_\_\_\_\_  
Notary Public



**NOTES:**

1. ABRASIVE BLAST (NEAR WHITE SP-10 GRADE) AND COAT GUARDRAIL ASSEMBLY WITH MINIMUM TWO COATS OF EPOXY AND ONE COAT OF POLYURETHANE ENAMEL AS SPECIFIED. COLOR YELLOW TO MATCH MARKER POST AS SELECTED BY OWNER.
2. POSITION AND CENTER POST TYPE TEST STATION SO THAT THERE IS GOOD ACCESS AND CAP OR LID CAN BE REMOVED EASILY FOR TESTING.

**POST TEST STATION TRIANGLE TYPE**  
**GUARDRAIL ASSEMBLY (GILLETTE)**

NTS

**13929TG**

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STD DET13929TG



LAST REVIEWED 2-22-2012



CITY OF GILLETTE

GIS Division  
P.O. Box 3003  
Gillette, Wyoming 82717-3003  
Phone (307) 686-5364  
www.gillettewy.gov

Legend

Parcels

City Limits

DRAINAGE

FENCE

CURB STOP

(LOCATIONS ARE  
GENERAL, NOT  
SURVEYED)

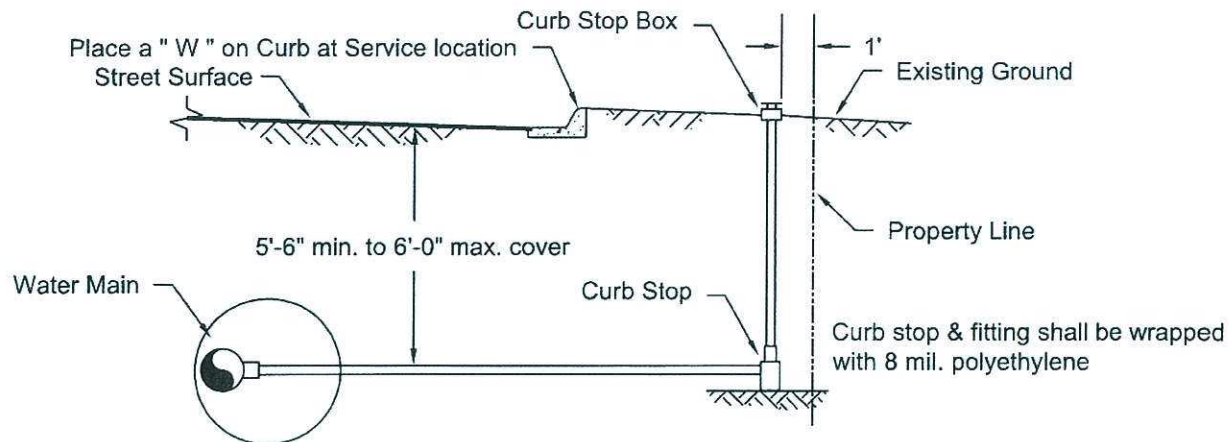
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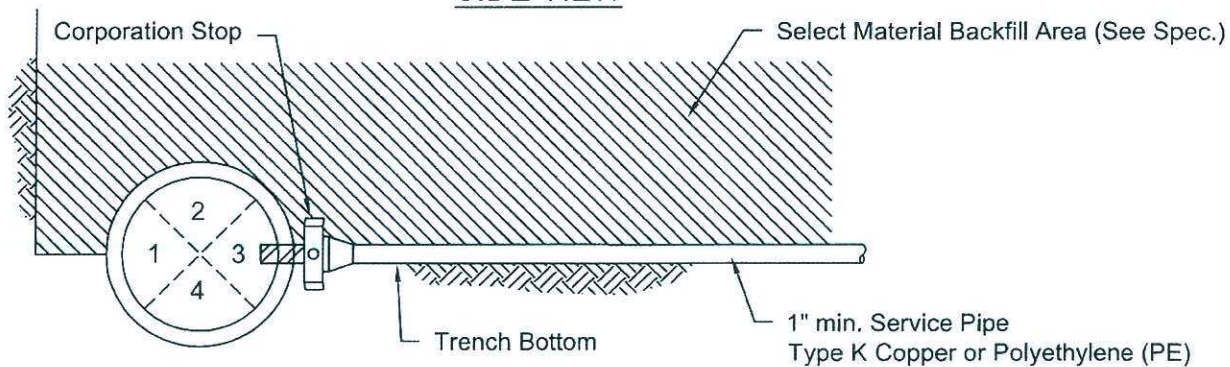
EXHIBIT "B"

January 22, 2014

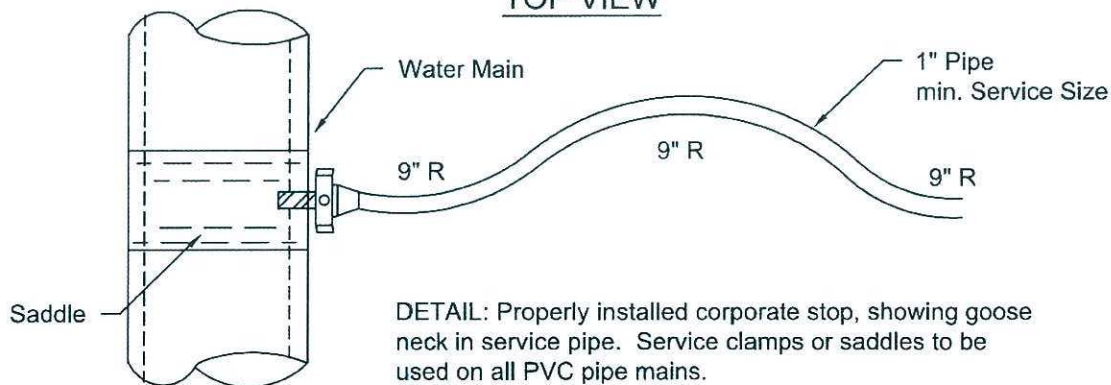
Service With P.R.I.D.E.  
Productivity Responsibility Integrity Dedication Enthusiasm



SIDE VIEW



TOP VIEW



NOTES:

1. Water Service lines shall have a minimum 5'-6" to 6'-0" maximum cover measured from the existing ground surface, except that cover shall be measured from centerline street grade when service lines are laid to a street side which has an uphill slope.
2. Water Service lines shall be installed where shown on the drawings or as specified.
3. Bedding shall be 1" Ø maximum within 6" of service pipe.



*City Of Gillette*

ENGINEERING DIVISION  
P.O. BOX 3909, 201 E. 5TH STREET  
GILLETTE, WYOMING 82717  
PHONE: (307) 696-5311

**TYPICAL WATER SERVICE  
CONNECTION DETAIL**

DRAWN BY: E.G.

APPROVED BY: CITY ENGINEER DLH/KDS

DATE:

JANUARY 2009

DRAWING NO.

02665-10