

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of March 15, 2016 ("Effective Date") between

City of Gillette ("Owner")

and

Kadrmass, Lee & Jackson, Inc., 4585 Coleman Street, Bismarck, ND 58503 ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Construction Administration Services for 2015 Water Main Replacement (16UT03) ("Project").

Engineer's Services under this Agreement are generally identified as follows:

Refer to Appendix 1 for a detailed Engineer's Scope of Services.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraph 7.01.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: September 30, 2016.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding 6 months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. 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, then 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, 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. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

A. The obligation to continue performance 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. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform 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, by Owner effective upon Engineer's receipt of written notice from Owner.

B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.

- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the 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.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *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. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

- D. 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. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. 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 (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All 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. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) 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.
- I. 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 as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or 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: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

7.01 *Basis of Payment—Direct Labor Costs Times Factor, Plus Reimbursables*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
1. An amount equal to Engineer's Direct Labor Costs times a factor for services of Engineer's employees engaged on the Project, plus reimbursable expenses, and Engineer's consultants' charges, if any.
 2. The total compensation for services and reimbursable expenses is estimated to be \$172,300.

8.02 KLJ Additions to EJCDC E-520

The Owner and Engineer each agree to assume its own liability for claims of any nature including all costs, expenses and reasonable attorney's fees, which may in any manner result from or arise out of this agreement. 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.

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.

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.

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.

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.

Attachments:

Appendix 1, Engineer's Scope of Services

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

OWNER:

By: Louise Carter-King

Title: Mayor

Date Signed: _____

Address for giving notices:

City of Gillette

Attn: Steven Peterson

P.O. Box 3003

Gillette, WY 82717

ENGINEER:



By: Mark Anderson

Title: Director, Surface Transportation

Date Signed: 2/25/2016

Engineer License or Firm's Certificate

Number: ES-0605

State of: Wyoming

Address for giving notices:

Kadmas, Lee & Jackson, Inc.

Attn: Mark Anderson

4585 Coleman Street

Bismarck, ND 58503

**2015 WATER MAIN REPLACEMENT
CITY OF GILLETTE 16UT03
GILLETTE, WY**

**KLJ
FEBRUARY 25, 2016**

I. DESCRIPTION

The 2015 Water Main Replacement project entails professional engineering services for the construction administration for Rose Creek Drive from Foxhill Avenue to Rodeo Street, Cabin Drive, Cabin Court and Morningside Drive.

KLJ services will include RPR, construction staking and geotechnical testing. Materials Testing will be completed by STRATA and daily reports generated. City of Gillette 2012 Design Standards and Standard Construction Specifications will be adhered to throughout construction administration services.

II. SERVICES TO BE PERFORMED

PROJECT MANAGEMENT

KLJ will provide project management for its scope of work listed in the tasks below in the manner described below.

Project Management addresses and allocates resources on a wide range of activities from conception to completion of a project, including: defining project goals and objectives; specifying tasks and resources; and creating budgets and timelines. The project manager handles all day to day activities and coordination for all actions throughout the duration of the project. The project manager also ensures quality control procedures are on-going throughout the project.

The project manager also delegates all activities to the project team and coordinates the progress and completion of these activities. In addition, if any item arises during the duration of the project that is outside this scope of work, the project manager will address it with the City of Gillette. Ultimately, the project manager is accountable for delivering successful components for the project.

CONSTRUCTION PHASE

KLJ will provide general construction administration services for the tasks identified below.

Pre-Construction & Progress Meetings

Agendas will be provided for the Pre-Construction Meeting along with progress meetings. At least one (1) representative will be present to conduct and participate in these meetings. Meeting minutes will be documented and distributed. Fourteen (14) progress meetings are anticipated as part of this project.

General Construction Administration

Progress schedules and Shop Drawing submittals will be reviewed and approved as necessary. Contractor's Application for Payment will be produced by the engineer with certification from the contractor. Pay requests will be submitted to the owner for acceptance. Time is included for up to five (5) applications for payment and up to one (1) change order.

Full Time Construction Inspection (70 days)

Full time construction inspection will be provided. On average, nine (9) hours a day of construction inspection will be provided for the seventy (70) working days up to Substantial Completion.

Construction Staking

Control will be set. The estimated construction staking is as follow:

- 1) Water Main Offset Staking including fire hydrant locations
- 2) Blue Topping for subgrade, aggregate base and asphalt surfacing
- 3) Verification of asphalt thickness

These services will be completed one (1) time at the request of the contractor. Additional trips and/or additional staking requests will be considered additional services.

Weekly Construction Observation Reports

Up to fifteen (15) weekly reports will be submitted utilizing City of Gillette Standard forms. Reports will be submitted by 5:00 P.M. on the following Monday. Information will include daily construction activities, progress meeting minutes, estimated quantities, a weekly status report and materials testing reports as available.

POST CONSTRUCTION PHASE

KLJ will provide services for the tasks identified below in coordination with the City of Gillette.

Substantial Completion

Minimal construction inspection is anticipated after substantial completion. Four (4) hours a day, on average, will be provided during these ten (10) working days. Substantial completion documents will be prepared and submitted to the owner. Documents will include the contractors punch list along with the Certificate of Substantial Completion.

Final Completion

Final completion documents will be prepared and submitted to the owner. These documents will include the Affidavit on Behalf of Contractor, Contractor Warranty Statement and Certificate of Final Completion. These documents will be submitted with a recommendation of final acceptance.

Record Drawings

Record Drawings will be maintained throughout the construction process. Record Drawings will be submitted to the owner following final completion.

One-Year Warranty Inspection

At least one (1) representative will be present to complete the one-year warranty inspection with the owner. Representative will follow up with contractor as need be to address items of concern at that time.

III. KLJ'S LIMITATIONS

This Scope of Work is limited to the description of services contained herein. If required, additional services not specified in the Scope of Work would be considered extra work and fees would be negotiated at a later date.

IV. DELIVERABLES PROVIDED BY KLJ

1. Pre-Construction Meeting Agenda and Meeting Minutes
2. Weekly Construction Observation Reports
3. Contractor's Application for Payment
4. Substantial Completion Documents
 - a. Contractor's Punch List
 - b. Certificate of Substantial Completion
5. Final Completion Documents
 - a. Affidavit on Behalf of Contractor
 - b. Warranty

- c. Certificate of Final Completion
- 6. Record Drawings

V. SUBCONSULTANTS

- 1. STRATA, A Professional Services Corporation - Materials Testing

VI. KLJ ESTIMATED DISTRIBUTION OF COMPENSATION

Construction Phase - \$117,100

Post Construction Phase - \$21,800

Materials Testing - \$33,400

Total Compensation for Construction Administration Services is \$172,300.