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THE PERTAN GROUP
PROFESSIONAL SERVICES AGREEMENT
City of Gillette PAVER Software Implementation Project No. 16EN21 Mod 001

This agreement ("Agreement") is entered into as of July 26, 2016 ("Effective Date") by and between PERTAN, Inc. (aka: "PERTAN"), a business management consulting firm located at 44 East Main Street, Suite 513, Champaign, IL 61820, and The City of Gillette, WY ("Client").

1.0 SCOPE OF SERVICES

1.1 Project Overview

PERTAN will provide the following services ("Services") to Client:

The following describes the tasks that The PERTAN Group PAVER Team will take to meet the Scope of Work for the City of Gillette PAVER Software Implementation Project No. 16EN21. (A detailed description of the tasks is described in Appendix A.) The City Road Network consists of 74 lane miles of arterial streets, 64 lane miles of collector streets, and 246 local street lane miles. All total there are approximately **405 lane miles** of public streets.

1.2 Scope of Work

PERTAN will provide the following services ("Services") to Client:

PHASE I--Tasks 1-4	Deadline
Additional Task 3: Pavement Condition Survey for an additional 21.3 lane miles	TBD
Optional PHASE II Tasks 5-10 (Modification to contract will be required for Optional Tasks 5-10)	Deadline
Task 5: Submit Model Work Plans (Identification and Determination of a Preventative Maintenance Program and Rehabilitation Strategy)	TBD
Task 6: Develop Preliminary Prediction Models	TBD
Task 7: Training/ Future PAVER Development and Implementation Recommendations.	TBD
Task 8: Develop Last Construction Dates	TBD

1.3 Client Responsibilities

Upon commencement of the project Client will provide PERTAN with the following:

The City of Gillette will furnish the appropriate number of PAVER 7 license as necessary for the City to adequately maintain the license for City Users. The City will provide a work station for the contractor's staff that includes accesses to the City's GIS data system, GIS software, GIS support, support from City engineering staff, and if desired the last construction dates for sections to be surveyed. The City will also make available all existing studies, reports, recording drawings and other available data that the City has on file which are pertinent to the project. The City will coordinate and conduct timely City Staff reviews of all

submittals. The City will review all documents presented by the contractor and make prompt decisions on questions posed. The City will advise the contractor immediately of any new developments that have the potential of affecting the project.

2.0 DELIVERABLES & DEADLINES

PERTAN will provide the following deliverables ("Deliverables"):

PHASE I:

Additional Task 3: The Deliverables for Task 3 will consist of:

- a) **PCI Survey:** The PCI Survey for an additional 21.3 lane miles will be conducted within **4 weeks** of Contract Award.
- b) **PCI Survey information uploaded into PAVER 7:** The information gathered during the PCI Survey will be entered into PAVER 7 TBD.

PHASE II (Tasks 5-8)

Task 5: The Deliverables for Task 5 will consist of:

- a) **Model Work Plan:** The Model Work Plan period of service will be determined upon Contract Award.

Task 6: The Deliverables for Task 6 will consist of:

- a) **Preliminary Prediction Models:** The Preliminary Prediction Models period of service will be determined upon Contract Award.

Task 7: The Deliverables for Task 7 will consist of:

- a) **Training:** Training for the City of Gillette Staff period of service will be determined upon Contract Award.
- b) **Out briefing:** The Out briefing which will summarize the work accomplished under this contract and recommend future PAVER Development and Implementation period of service will be determined upon Contract Award.

Task 8: The Deliverables for Task 8 will consist of:

- a) **Develop last construction dates:** Development of the last construction dates and entered into the PAVER 7 database period of service will be determined upon Contract Award.

Any delays in PERTAN's performance caused by Client or third parties shall not constitute a breach of this Agreement by PERTAN. Any delays in Client's performance caused by PERTAN or third parties shall not constitute a breach of this Agreement by Client. The Project Schedule may be amended upon agreement of the parties. Significant revisions to a Project Schedule shall be put in writing and attached to this Agreement.

3.0 FEES, EXPENSES & PAYMENT

3.1 Project Fees

PERTAN will charge Client as follows:

Phase I		
Task	Amount	
Additional Task 3: Pavement Condition Survey for an additional 21.3 lane miles	\$ 9,960	<u>\$ 9,960.00</u>
Phase II		
Task	Amount	
Task 5: Submit Model Work Plans (Identification and Determination of a Preventative Maintenance Program and Rehabilitation Strategy)	\$ 18,025	
Task 6: Develop Preliminary Prediction Models	\$ 5,108	
Task 7: Training/ Future PAVER Development and Implementation Recommendations.	\$ 8,968	
Task 8: Develop Last Construction Dates	\$ 3,900	<u>\$ 36,001.00</u>
		<u>\$ 45,961.00</u>

3.2 Expenses

In the event expenses for the project are incurred it will be the responsibility of the client to cover the cost of the expenses. Client will be notified in advance of estimated cost of expenses and their relationship to the project. Expenses for travel and direct costs will be reimbursed at the following rates:

- Mileage Reimbursement shall be \$.54 per mile (as of 1/26/16) (Federal GSA rate located at www.gsa.gov)
- Direct Costs shall be the direct costs plus 10% for administration and overhead (OH).
- Hotel, Car Rental, and equipment shall be the actual costs plus 10% for administration and OH.
- Subcontractors shall be the actual cost plus 15% for supervision, administration and OH.

Unless an expense is approved in advance by Client, PERTAN shall be responsible for all expenses incurred while performing services under this Agreement.

3.3 *Fees for Services Beyond Project Scope*

Client and PERTAN will negotiate any additional fees for work beyond the scope of the work described above. Further services would be calculated at PERTAN's standard rates listed below:

Fully Burdened Labor Rate	Labor Category
\$128.68	Project Engineer
\$85.13	Senior Civil Engineer
\$65.33	Junior Civil Engineer
\$81.17	Engineer Technician
\$41.57	Junior Engineer Technician
\$97.00	PAVER Programmer
\$81.17	CADD/ GIS Technician
\$43.55	Clerical

3.4 *Payment Terms*

Client will pay PERTAN as follows:

Phase I

Additional Task 3:

- **\$9,960.00** upon completion of **Additional Task 3** and invoice from PERTAN.

Phase II

Tasks 5-8:

Tasks 5-8 the City of Gillette, WY. Client will pay PERTAN as follows if the funds are awarded and the modification signed by both parties.

- **\$18,025.00** upon completion of **Task 5** and invoice from PERTAN.
- **\$5,108.00** upon completion of **Task 6** and invoice from PERTAN.
- **\$8,968.00** upon completion of **Task 7** and invoice from PERTAN.
- **\$3,900.00** upon completion of **Task 8** and invoice from PERTAN.

4.0 INTELLECTUAL PROPERTY

4.1 Intellectual Property Ownership

PERTAN assigns to Client PERTAN's entire copyright, title and interest in the following content ("Content"):

- All text written or edited for Client's PAVER Implementation Project.

If PERTAN hires any third parties to create Content as described in this Agreement, PERTAN will secure ownership of those portions, and such ownership will be assigned to Client under this section.

Client will secure all necessary rights to copyright, trademark or other intellectual property to any materials it submits to PERTAN for use in the Services.

Nothing in this section will affect ownership of intellectual property created and owned by any entities not a party to this Agreement and not pursuant to an agreement with PERTAN.

4.2 Credit

PERTAN and Client agree to the following obligations regarding:

Client will include the following credit:

“The PAVER Implementation for the City of Gillette, WY was developed by THE PERTAN GROUP **PAVER Team**, www.pertan.com ; phone: (217) 356-1348.”

This credit will appear: In the appropriate section of website or of a printed report referencing the PAVER Implementation.

No materials bearing PERTAN’s name shall be modified or reformatted in any way by Client without review and written consent from PERTAN.

4.3 License to PERTAN & Permitted Uses

Client grants to PERTAN permission to reproduce Project Deliverables for use in portfolios and other PERTAN marketing materials, to use Client as a reference for the work performed by PERTAN, and to publish and speak publicly about the processes and materials developed in the course of performance of this Agreement, so long as trade secrets or confidential information of Client are not disclosed without Client’s consent.

5.0 TERM & TERMINATION

5.1 Term

The term of this Agreement shall commence on the Effective Date and shall automatically terminate on April 1, 2017 or on the completion of the Services, delivery of Deliverables, and payment of all Project Fees and Expenses as specified in this Agreement, whichever is later, unless otherwise extended by mutual written agreement or terminated in accordance with Section 5.2.

5.2 Termination

(a) Either party may terminate this Agreement effective immediately if the other party (i) commits any material breach or default of this Agreement; (ii) becomes the subject of any voluntary or involuntary proceeding under the U.S. Bankruptcy Code or state insolvency proceeding and such proceeding is not terminated within sixty (60) days of its commencement; or (iii) ceases to be actively engaged in business and has not assigned this Agreement in accordance with Section 10.1.

(b) If this Agreement is terminated other than by reason of a material breach by PERTAN, PERTAN shall be entitled to a pro rata payment for work in progress based on the percentage of the Services then completed, as reasonably determined by PERTAN in accordance with the applicable fee schedule and PERTAN’s standard hourly rate as set forth in Section 3.0.

6.0 CONTRACTOR RELATIONSHIP

PERTAN is an independent contractor, and neither PERTAN nor PERTAN's employees or contract personnel are, or shall be deemed, Client's employees. This Agreement does not create a partnership relationship. Neither PERTAN nor Client have authority to enter into contracts on the other's behalf.

7.0 NON-SOLICITATION & CONFIDENTIAL INFORMATION

7.1 Non-solicitation

During, and for a period of five years after termination of this Agreement, Client agrees not to solicit or recruit PERTAN's employees, contractors, or freelancers of which Client becomes aware as a result of PERTAN's services for Client.

7.2 Confidential Information

PERTAN and Client agree not to use or disclose to any third party, either during or after the term of this Agreement, any proprietary or confidential information of the other party without the other party's consent. PERTAN and Client shall not be restricted in using any material which is publicly available, already in their possession or known to them, or which is rightfully obtained from sources other than the other party.

Proprietary or confidential information includes business plans, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries and improvements of any kind owned by PERTAN or by Client; and any information marked "Proprietary" or "Confidential."

8.0 WARRANTIES & REPRESENTATIONS

PERTAN warrants that it is able to complete the Services in a professional and timely manner; that any Project Deliverables shall be original or all necessary permissions and releases obtained and paid for; and that any Project Deliverables shall not contain any false, misleading, libelous or unlawful matter.

Client warrants that any material given by Client to PERTAN for use in the Services under this Agreement shall be original or all necessary permissions and releases obtained and paid for; and that any such material shall not contain any false, misleading, libelous or unlawful matter.

9.0 LIABILITY

9.1 Total Liability

In no event shall PERTAN's aggregate liability for all cases or controversies arising out of the subject matter of this Agreement, whether in contract, tort or otherwise, exceed the aggregate payments actually received by PERTAN under this Agreement. In no event will PERTAN be liable to Client or any third party for any special, incidental or consequential damages or lost profits, whether based in breach of contract, tort (including negligence), product liability or otherwise, and whether or not PERTAN has been advised of the possibility of such damage.

9.2 Limitation of Remedies

Client's exclusive remedy, and PERTAN's sole liability for any case or controversy arising out of PERTAN's failure to perform any of its obligations hereunder shall be to terminate this Agreement


pursuant to Section 5.2 and receive a refund from PERTAN of the unearned portion of any fees paid with respect to the Services.

10.0 MISCELLANEOUS

10.1 Disputes

If a dispute arises under this Agreement, the parties agree first to try to resolve the dispute with the help of a mutually agreed-upon mediator in Wyoming. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties. If the dispute is not resolved within 30 days after it is referred to the mediator, any party may take the matter to court. If any court action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses in addition to any other relief to which he or she may be entitled.

**THE PERTAN GROUP
PROFESSIONAL SERVICES AGREEMENT
City of Gillette PAVER Software Implementation Project No. 16EN21**

City of Gillette, WY	The PERTAN Group
Signature:	Signature: 
Name: Louise Carter-King	Name: Patrick Tanner
Title: Mayor	Title: Partner
Date:	Date: July 26, 2016
Attest:	
Title: City Clerk	

Appendix A

Scope of Work

PHASE I:

Additional Task 3: Pavement Condition Index (PCI) Survey

The field inspections or PCI Surveys will be performed by The PERTAN Group PAVER Team using the PCI scale and following current ASTM Standards for pavement inspection. The survey area will include the additional identified 21.3 lane miles located within the City of Gillette. In the past we have performed both manual and automated surveys. We have found that manually performed surveys are more cost effective and can provide more accuracy than automated surveys. In addition, manual inspections keep the engineer closer to the pavement he is inspecting.

The PAVER Team will perform a continuous objective pavement crack survey, manually measuring the severity and quantity of transverse, longitudinal, and alligator pavement cracking, or any other ASTM distress present over the entire length of each pavement sample. The Project Team (County staff and The PAVER Team) will adhere to the standards issued in *ASTM D6433 – 11 Standard Practice for Road and Parking Lots Pavement Condition Index Survey*. This survey includes all 20 distresses for asphalt surfaces and 19 distresses for concrete surfaces.

Additional Task 3 Period of Service: The PCI Survey will be conducted for an additional 21.3 lane miles and entered into PAVER 7 TBD.

Additional Task 3 Milestones:

- a) **PCI Survey:** The additional PCI Survey will be conducted TBD.
- b) **PCI Survey information uploaded into PAVER 7:** The information gathered during the PCI Survey will be entered into PAVER 7 TBD.

PHASE II –Tasks 5-8

Task 5: Submit Model Work Plans (Identification and Determination of a Preventative Maintenance Program and Rehabilitation Strategy)

The PAVER Team will meet with your Engineering staff to determine the City's current practice of pavement treatment. The PAVER Team will update the database for the type of maintenance, rehabilitation, or replacement treatments required for each street segment and the estimated cost for performing any alternative treatments. The PAVER Team is then able to analyze each street segment in a detailed decision tree based on the organization's own procedures and maintenance activities. Suggested maintenance and rehabilitation treatments will include major work procedures that will repair structural deficiencies or surface repairs that prolong the pavements life, by applying surface treatments and overlays. The PAVER Team will analyze the organization's treatment practices and set up the decision trees within PAVER™ to provide compatible recommendations. This analysis may also include minor maintenance treatments such as recommending and costing the repair of individual pavement distresses, which are identified in the distress survey.

Task 5 Period of Service: The Model work plans period of service will be determined based on contract award.

Task 5 Milestones:

- a) **Model Work Plan:** The Model Work Plan will be completed TBD.

Task 6: Develop Preliminary Prediction Models

The PAVER Team will develop prediction models of the surveyed pavements using the entered work history and pavement conditions. *It is important to note, if Gillette does not elect to implement Optional Task 8, initial construction dates will have to be back calculated using defined deterioration rates found on "like pavements" in the surrounding area.* The amount of work history and initial construction dates provided will determine the accuracy of the models. At a minimum, prediction models will be developed for each combination of Branch Use and Surface Type. The PAVER Team, in cooperation with your organization, will determine the Critical PCI for each family model. Then The PAVER Team will assign sections to the appropriate deterioration models developed.

Task 6 Period of Service: The Preliminary Prediction Models period of service will be determined based on contract award.

Task 6 Milestones:

- a) **Preliminary Prediction Models:** The Preliminary Prediction Models will be available TBD.

Task 7: Training/ Future PAVER Development and Implementation Recommendations.

At the debriefing The PAVER Team will train the City of Gillette employees to a level that will allow them to develop reports and perform the annual maintenance of the Software. In addition, at the out briefing meeting, The PAVER Team will summarize the work accomplished during this contract and recommend future PAVER Development and Implementation Projects.

Task 7 Period of Service: The Training and out briefing which will include recommendations for future PAVER development and implementation projects period of service be will be determined based on contract award.

Task 7 Milestones:

- a) **Training:** Training for the City of Gillette Staff will be completed TBD.
- b) **Out briefing:** The Out briefing which will summarize the work accomplished under this contract and recommend future PAVER Development and Implementation will be conducted once the project is concluded.

Task 8: Develop Last Construction Dates

Task 8 includes developing the last construction dates into PAVER 7 data base.

Task 8: Period of Service: The period of service for the development of last construction dates will be determined based on contract award.

Task 8 Milestones:

- a) **Develop last construction dates:** Development of the last construction dates and entered into the PAVER 7 database TBD.