

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of September 19, 2017 ("Effective Date") between

City of Gillette, WY ("Owner")

and

Kadrmaz, 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:

PMS 2018 Schedule B 18EN03 ("Project").

Engineer's Services under this Agreement are generally identified as follows: **See Exhibit A**

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 Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: Bid Opening 02/21/2018.
- 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 ____ 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 \$100,500.

7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer 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. Engineer's standard hourly rates are attached as Appendix 1.

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.

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.

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.

Affirmative Action: This Engineer and sub-contractor or sub-consultant shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require

that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

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

OWNER:

By: _____

Title: Mayor

Date Signed: _____

Attest:

Address for giving notices:

City of Gillette

Steven Peterson

201 E. 5th Street

Gillette, WY 82716

ENGINEER: Kadrmas, Lee & Jackson, Inc.,

By: 

Title: Municipal Group Manager

Date Signed: 8/10/17

Engineer License or Firm's Certificate

Number: ES-0605

State of: _____

Address for giving notices:

KLJ

Dana Foreman

330 Knollwood Drive

Rapid City, SD 57701

PMS 2018 SCHEDULE B
CITY OF GILLETTE 18EN03
GILLETTE, WY

KLJ
AUGUST 9, 2017

I. DESCRIPTION

The PMS 2018 Schedule B project entails professional engineering services for the design and bidding of pavement rehabilitation for the following streets:

- Mill and overlay (M&O) Wagonhammer Lane from Boxelder to W. Redwood St.
- M&O S. Gillette Ave. from Boxelder to E. Redwood St.
- M&O E. Laurel St. from S. Gillette Ave. to S. Emerson Ave.
- M&O W. Timothy from Wagonhammer Lane to S. Gillette Ave.
- M&O E. Timothy from S. Gillette Ave. to S. Emerson Ave.
- Reconstruction Timothy Ct. West End to Wagonhammer Lane
- Reconstruction S. Emerson Ave. from E. Walnut St. to Sequoia Drive

KLJ services will include, survey, roadway overlay layout and design, roadway reconstruction design, removal plans and specification production and bidding services. A geotechnical investigation will be completed by STRATA and a report generated to aid in road design, excavation and backfill. City of Gillette 2017 Design Standards and Standard Construction Specifications will be referenced throughout the design 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.

SURVEY & PRELIMINARY ENGINEERING

KLJ will provide surveying and preliminary engineering services for the tasks identified below.

Topographic & Design Survey

KLJ will complete and furnish a ground survey of S. Emerson Avenue and E. Walnut Street roadways that are to be reconstructed and portions along roadways identified for overlay paving that requires a detailed survey. Survey will include site contours, critical spot elevations, existing surface features, and above and below ground utilities. Topographic survey will be generally be bounded within the right-of-way limits, and occasionally beyond as needed to verify grades,

adjacent features and structures. The topographic survey will be accomplished by conventional methods. Control points will be established as City of Gillette Coordinate Datum if available.

Prior to beginning topographic data collection, a level network will be run through all control points and tied to the published City of Gillette Vertical Datum via bench mark. As topographic data is collected, an ongoing QA/QC process will verify all data and make sure pertinent features are included for and on the base map.

Base Drawing Preparation

A base drawing will be created depicting KLJ topographic survey data, aerial imagery and record drawings provided by utility owners and the City of Gillette as available.

Evaluate Existing Utilities

KLJ will research and document existing public and privately-owned utilities, and evaluate if existing or potential conflicts necessitate utility relocation. KLJ will also initiate correspondence with existing utility companies.

Preliminary Road Design - Reconstruction Streets

KLJ will develop a typical section based on the geotechnical investigation report and recommendations by STRATA as part of this project. KLJ will design horizontal and vertical alignment. KLJ will create preliminary plan and profile sheets as well as calculate preliminary quantities for both removal and replacement. KLJ will coordinate alignment adjacent property constraints. Drainage features will be incorporated into these drawings as necessary. Detail drawings of supplemental design information required will be created for construction purposes. KLJ will prepare preliminary design sheets, details, calculate preliminary quantities and draft specifications.

Preliminary Road Design - Overlay Streets

KLJ will develop a typical section and will create preliminary plan sheets as well as calculate preliminary quantities for both removal and replacement. KLJ will coordinate alignment adjacent property constraints. Curb, gutter, valley pans and other drainage features along with ADA ramps will be incorporated into these drawings as necessary. Detail drawings of supplemental design information required will be created for construction purposes. KLJ will prepare preliminary design sheets, details, calculate preliminary quantities and draft specifications.

Preliminary SWPPP

KLJ will design a preliminary storm water pollution prevention plan (SWPPP). KLJ will also complete preliminary plan sheets, calculate preliminary quantities and draft specifications.

Traffic Control Plan

KLJ will provide preliminary recommended traffic control measures during the various construction phases. The specifications will include a written plan as well as plan sheets showing recommendations for detours, signing and pavement markings for the required construction phasing.

Quantities & Opinion of Construction Cost Estimate

KLJ will calculate and furnish quantities to be included in the construction documents. KLJ will submit an opinion of construction cost estimate to the City of Gillette for review and concurrence.

Internal QA/QC

Quality Assurance (QA) defines the level of quality required and determines how it is achieved throughout the entire project. QA includes a method of monitoring compliance with the City and

KLJ quality requirements. Timely audits during the project will be conducted to maintain compliance.

Quality Control (QC) is conducted throughout the project to check if the production meets quality levels agreed to by the City and KLJ. The process will include interdisciplinary reviews, cross check between drawings and specifications, constructability review, efficiency review and operability review.

50% Plans & Specifications

KLJ will compile designs from all tasks under surveying and preliminary engineering into a complete plan set. KLJ will compile specifications based on City of Gillette Standard Construction Specifications. KLJ will prepare three (3) sets of plans, specifications and preliminary opinion of construction cost estimate based on the 50 percent design, and submit to the City of Gillette for review and concurrence. KLJ will also submit electronic version of plans, specifications and opinion of construction cost estimate to the City of Gillette E Plan system.

Preliminary Engineering Services Review

KLJ will attend a review meeting with City of Gillette staff and appropriate agencies to discuss comments pertaining to 50 percent plans and specifications.

90% PLANS & SPECIFICATIONS

KLJ will provide surveying and engineering services for the tasks identified below. The 90 percent plans and specifications will be produced based on recommendations and subsequent decisions made during the preliminary engineering services review.

Final Survey

KLJ will perform additional survey, if required, after satisfactory completion of preliminary engineering services. Data will be incorporated into the preliminary survey data and utilized for final design.

Road Design

KLJ will prepare detailed plan and profile drawings relative to feedback received during the 50 percent preliminary engineering services review. Quantities and specifications will be refined.

SWPPP Design

KLJ will evaluate the proposed improvements and construction activities for temporary sediment and erosion control measures. KLJ will incorporate recommended practices in a storm water pollution prevention plan. KLJ will refine plan sheets, quantities and specifications.

Traffic Control Plan

KLJ will provide recommended traffic control measures during the various construction phases. The specifications will include a written plan as well as plan sheets showing recommendations for detours, signing and pavement markings for the required construction phasing.

Quantities & Opinion of Construction Cost Estimate

KLJ will calculate and furnish quantities to be included in the construction documents. KLJ will submit an opinion of construction cost estimate to the City of Gillette for review and concurrence.

Internal QA/QC

KLJ will monitor compliance with the City's and KLJ's quality requirements. KLJ will perform interdisciplinary reviews, cross check between drawings and specifications, constructability review, efficiency review and operability review.

90% Plans & Specifications

KLJ will compile designs from all tasks under surveying and engineering into a complete plan set. KLJ will compile specifications based on City of Gillette Standard Construction Specifications. KLJ will prepare three (3) sets of plans, specifications and opinion of construction cost estimate based on the 90 percent design, and submit to the City of Gillette for review and concurrence. KLJ will also submit electronic version of plans, specifications and opinion of construction cost estimate to the City of Gillette E Plan system.

Engineering Services Review

KLJ will attend a review meeting with City of Gillette staff and appropriate agencies to discuss comments pertaining to 90 percent plans and specifications.

FINAL DESIGN & BIDDING SERVICES

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

Final Plan & Specifications Revisions

KLJ will incorporate any corrections necessary following the 90 percent plans and specifications review. Prepare and furnish five (5) sets of final plans for bidding, contracts and construction. Stamp and sign all plans with the seal of the Professional Engineer responsible for the project design. KLJ will also submit electronic version of plans, specifications and opinion of construction cost estimate to the City of Gillette E Plan system.

Final Quantities & Opinion of Construction Cost Estimate

KLJ will calculate and furnish final quantities to be included in the bidding, contracts and construction documents. KLJ will submit a final opinion of construction cost estimate to the City of Gillette for review and concurrence.

Bidding, Bid Tabulation & Recommendation

KLJ will schedule and facilitate a pre-bid conference as well as attend and facilitate the project bid opening. KLJ will analyze bid proposals, prepare a bid tabulation and make a recommendation of construction contract award.

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. Project Schedule
2. Monthly Progress Reports
3. Meeting Minutes
4. 50% plans, specifications and construction cost estimate
5. 90% plans, specifications and construction cost estimate
6. Final plans, specifications and construction cost estimate
7. Bid Tabulation and Recommendation

V. SUBCONSULTANTS

1. STRATA, A Professional Services Corporation - Geotechnical Investigation and Report

VI. PROJECT SCHEDULE

A detailed project schedule will be provided in the form of a Gantt chart. Selected milestones are as follows:

Consultant Notice to Proceed	September 20, 2017
50% Design Submittal	November 15, 2017
50% Design Review Meeting	November 22, 2017
90% Design Submittal	December 26, 2017
90% Design Review Meeting	January 5, 2018
Final Design Submittal	January 19, 2018
Begin Advertisement for Bids	February 2, 2018
Bid Opening	February 21, 2018