

## INVESTMENT ADVISORY AGREEMENT

THIS AGREEMENT, entered into as of the \_\_\_\_\_ day of October, 2019, by and between CITY OF GILLETTE, CAMPBELL COUNTY, WYOMING, a Wyoming public agency (hereinafter the "Client"), and PFM ASSET MANAGEMENT LLC, a Delaware limited liability company with an office in Harrisburg, Pennsylvania (hereinafter the "Advisor").

### WITNESSETH

**WHEREAS**, the Client has funds available for investment purposes (the "Initial Funds") for which it intends to conduct an investment program; and

**WHEREAS**, the Client desires to avail itself of the experience, sources of information, advice, assistance and facilities available to the Advisor; to have the Advisor undertake certain duties and responsibilities; and to perform certain services as investment advisor on behalf of the Client, as provided herein; and

**WHEREAS**, the Advisor is willing to provide such services on the terms and conditions hereinafter set forth;

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, the parties hereto, intending to be legally bound, agreed as follows:

#### **1. SERVICES OF ADVISOR.**

The Client hereby engages the Advisor to serve as investment advisor under the terms of this Agreement with respect to the Initial Funds and such other funds as the Client may from time to time assign by written notice to the Advisor (collectively the "Managed Funds"), and the Advisor accepts such engagement. In connection therewith, the Advisor will provide investment research and supervision of the Managed Funds investments and conduct a continuous program of investment, evaluation and, when appropriate, sale and reinvestment of the Managed Funds assets. The Advisor shall continuously monitor investment opportunities and evaluate investments of the Managed Funds. The Advisor shall furnish the Client with statistical information and reports with respect to investments of the Managed Funds. The Advisor shall place all orders for the purchase, sale, loan or exchange of portfolio securities for the Client's account with brokers or dealers recommended by the Advisor and/or the Client, and to that end the Advisor is authorized as agent



of the Client to give instructions to the custodian designated by the Client (the "Custodian") as to deliveries of securities and payments of cash for the account of the Client. In connection with the selection of such brokers and dealers and the placing of such orders, the Advisor is directed to seek for the Client the most favorable execution and price, the determination of which may take into account, subject to any applicable laws, rules and regulations, whether statistical, research and other information or services have been or will be furnished to the Advisor by such brokers and dealers.

Upon request, the Advisor will provide non-discretionary investment advisory services to the Client and will assist the Client in directly purchasing non-negotiable Certificates of Deposit ("CDs"), which are intended to be fully insured by the Federal Deposit Insurance Corporation ("FDIC"), for the Client's account directly from the issuers of such CDs or through such brokers as the Advisor selects. At the request of the Client, the Advisor will timely advise the Client of CDs available to satisfy the Client's requirements. The Advisor and the Client agree that all CDs acquired by the Client hereunder shall be approved in advance of purchase by an authorized representative of the Client. Each CD will be issued by the financial institution in book-entry form and the book-entry registration shall be maintained by the financial institution. A safekeeping receipt or copy of the CD will be provided by the financial institution and will be retained by the Advisor as evidence of the deposit. Purchases of such CDs shall be conditioned upon the Client establishing and opening an account with a local government investment pool or registered investment company for which the Advisor serves as investment advisor and transfer agent (either, a "Pool"). The Client's purchase of CDs will be funded from the designated account of the Client in the Pool. The Client authorizes the Advisor, in its capacity as transfer agent of the Pool, to redeem shares in Client's designated account, and the Client authorizes the Pool's custodian to wire cash from the Client's designated account to financial institutions that will issue CDs being purchased by the Client. All principal and interest from a matured CD will be credited to the Client's designated Pool account promptly upon receipt. The Advisor shall not take possession of cash or securities in the Client's designated account and shall have no responsibility in connection therewith. The Client acknowledges financial institutions from which CDs are purchased may be small in size and may not be rated by national credit rating organizations. The CDs will not be collateralized. Hence there will be reliance on federal deposit insurance and it is crucial that the Client's CDs be fully covered by FDIC insurance. The Client understands that (i) the CDs in amounts above applicable FDIC insurance limits are not insured, (ii) substantially all of the credit research performed by the Advisor will relate to the eligibility/applicability of FDIC insurance to the CDs, and (iii) in determining FDIC insurance limits, Federal regulations provide that all amounts deposited by a depositor, including amounts deposited directly, through brokers or through other means in a financial institution regardless of the source, will be combined in determining the



insurance limit. The Advisor will maintain records of all CDs purchased by the Client hereunder to assist the Client in maintaining CDs within applicable insurance limits, but the Advisor is not responsible for the effects on FDIC insurance limits of deposits made directly by the Client or through other arrangements. It is the Client's sole responsibility to determine that deposits made directly by the Client outside of this Agreement or through other arrangements outside of this Agreement do not cause the CDs purchased by the Client hereunder to exceed the insurance limit. The Advisor will not monitor deposits made directly by Client or through other arrangements and the Client agrees the Advisor has no responsibility therefor. FDIC-insured CDs are generally not negotiable and not liquid. Substantial penalties may apply if the Client makes an early redemption. The Client authorizes the Advisor to charge the Client's designated Pool account for the advisory fee relating to CDs and authorizes the custodian of the Pool to disburse funds from such designated account for the payment of the advisory fee relating to CDs.

The Custodian shall have custody of cash, assets and securities of the Client. The Advisor shall not take possession of or act as custodian for the cash, securities or other assets of the Client and shall have no responsibility in connection therewith. Authorized investments shall include only those investments which are currently authorized by the state investment statutes and applicable covenants and as supplemented by such other written instructions as may from time to time be provided by the Client to the Advisor. The Advisor shall be entitled to rely upon the Client's written advice with respect to anticipated drawdowns of Managed Funds. The Advisor will observe the instructions of the Client with respect to broker/dealers who are approved to execute transactions involving the Managed Funds and in the absence of such instructions will engage broker/dealers which the Advisor reasonably believes to be reputable, qualified and financially sound.

## **2. COMPENSATION.**

(a) For services provided by the Advisor pursuant to this Agreement, the Client shall pay the Advisor an annual fee, in monthly installments, based on the daily net assets under management (excluding daily net assets invested in certificates of deposit) at an annual rate of:

<u>Assets Under Management</u>	<u>Annual Fee</u>
First \$25 million	12 basis points (0.12%)
Next \$25 million	8 basis points (0.08%)
Next \$50 million	7 basis points (0.07%)
Over \$100 million	6 basis points (0.06%)



With respect to the purchase of CDs for the Managed Funds as provided in Section 1 hereof, the Client shall pay the Advisor, an annual fee at a rate equal to 15 basis points (0.15%) per annum, applied against the principal amount of each CD purchased; such fee includes fees incurred by the Advisor to third parties in connection with such purchase. "Daily net assets" is defined to include the amortized value of securities, accrued interest and cash or any money market fund balance.

If applicable, the minimum annual fee is \$25,000, to be applied in equal monthly installments.

(b) The Advisor shall prepare an invoice for the investment management fee and shall submit it to the Client for approval. In accordance with WYO. STAT. §16-6-602, the Client shall remit payment to the Advisor within forty-five (45) days from receipt by the Client of a correct notice of amount due for services provided. Unless instructed otherwise within forty-five (45) calendar days of the receipt of the invoice, the Client authorizes the Advisor to charge such invoice to the Client's associated Pool account and instructs the Pool custodian to disburse funds from that account for the payment of the fees to the Advisor. Any payment the Client fails to remit to the Advisor as provided herein shall incur simple interest on all overdue amounts at the rate of one and one-half percent (1.5%) every thirty (30) calendar days, unless a good faith dispute exists as to the Client's obligation to pay all or a portion of the account. If the Advisor shall serve for less than the whole month, the compensation shall be pro-rated.

(c) Assets invested by the Advisor under the terms of this Agreement may from time to time be invested in a Pool (as such term is defined in Section 1 hereof), or in individual securities. Average daily net assets subject to the fees described in this section shall not take into account any funds invested in the Pool. Expenses of the Pool, including compensation for the Advisor and the Pool custodian, are described in the relevant prospectus or information statement and are paid from the Pool.

(d) If and to the extent that the Client shall request the Advisor to render services other than those to be rendered by the Advisor hereunder, such additional services shall be compensated separately on terms to be agreed upon between the Advisor and the Client.

### **3. EXPENSES.**

(a) The Advisor shall furnish at its own expense all necessary administrative services, office space, equipment, clerical personnel, telephone and other communication facilities, investment advisory facilities, and executive and supervisory personnel for managing the Managed Funds.



(b) Except as expressly provided otherwise herein, the Client shall pay all of its own expenses including, without limitation, taxes, commissions, fees and expenses of the Client's independent auditors and legal counsel, if any, brokerage and other expenses connected with the execution of portfolio security transactions, insurance premiums, and fees and expenses of the Custodian.

#### **4. REGISTERED ADVISOR; DUTY OF CARE.**

The Advisor hereby represents it is a registered investment advisor under the Investment Advisers Act of 1940, as amended. The Advisor shall immediately notify the Client if at any time during the term of this Agreement it is not so registered or if its registration is suspended. The Advisor agrees to perform its duties and responsibilities under this Agreement with reasonable care. The federal securities laws impose liabilities under certain circumstances on persons who act in good faith. Nothing herein shall in any way constitute a waiver or limitation of any rights which the Client may have under any federal securities laws. The Client hereby authorizes the Advisor to sign I.R.S. Form W-9 on behalf of the Client and to deliver such form to broker-dealers or others from time to time as required in connection with securities transactions pursuant to this Agreement.

#### **5. ADVISOR'S OTHER CLIENTS.**

The Client understands that the Advisor performs investment advisory services for various other clients which may include investment companies, commingled trust funds and/or individual portfolios. The Client agrees that the Advisor, in the exercise of its professional judgment, may give advice or take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the Managed Funds. The Advisor shall not have any obligation to purchase, sell or exchange any security for the Managed Funds solely by reason of the fact that the Advisor, its principals, affiliates, or employees may purchase, sell or exchange such security for the account of any other client or for itself or its own accounts.

#### **6. TERM.**

This Agreement may be terminated by the Client in the event of any material breach of its terms immediately upon notice to the Advisor by certified mail, return receipt requested. This Agreement may be terminated by the Client at any time, on not less than thirty (30) days' written notice to the Advisor. The Advisor may terminate this Agreement immediately upon any material breach of its terms by the Client, or at any time after one year upon thirty (30) days' written notice to the Client.



**7. FORCE MAJEURE.**

The Advisor shall have no liability for any losses arising out of the delays in performing or inability to perform the services which it renders under this Agreement which result from events beyond its control, including interruption of the business activities of the Advisor or other financial institutions due to acts of God, acts of governmental authority, acts of war, terrorism, civil insurrection, riots, labor difficulties, or any action or inaction of any carrier or utility, or mechanical or other malfunction.

**8. DISCIPLINARY ACTIONS.**

The Advisor shall promptly give notice to the Client if the Advisor shall have been found to have violated any state or federal securities law or regulation in any final and unappealable judgment in any criminal action or civil suit in any state or federal court or in any disciplinary proceeding before the Securities and Exchange Commission or any other agency or department of the United States, any registered securities exchange, the Financial Industry Regulatory Authority, or any regulatory authority of any State based upon the performance of services as an investment advisor. Any judgment entered against the Advisor as described in this Section 8 shall be grounds for the Client to notify the Advisor of immediate termination of this Agreement for convenience, and the Advisor expressly agrees that any prior notice requirement for such termination shall not apply.

**9. INDEPENDENT CONTRACTOR.**

The Advisor, its employees, officers and representatives shall not be deemed to be employees, agents (except as to the purchase or sale of securities described in Section 1), partners, servants, and/or joint ventures of the Client by virtue of this Agreement or any actions or services rendered under this Agreement.

**10. BOOKS.**

The Advisor shall maintain records of all transactions in the Managed Funds. The Advisor shall provide the Client with a monthly statement showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received, and the value of assets held on the last business day of the month. The statement shall be in the format and manner that is mutually agreed upon by the Advisor and the Client.

**11. THE ADVISOR'S BROCHURE AND BROCHURE SUPPLEMENT.**

The Advisor warrants that it has delivered to the Client prior to the execution of this Agreement the Advisor's current Securities and Exchange Commission Form ADV, Part 2A

(brochure) and Part 2B (brochure supplement). The Client acknowledges receipt of such brochure and brochure supplement prior to the execution of this Agreement.

**12. MODIFICATION.**

This Agreement shall not be changed, modified, terminated or discharged in whole or in part, except by an instrument in writing signed by both parties hereto, or their respective successors or assigns.

**13. SUCCESSORS AND ASSIGNS.**

The provisions of this Agreement shall be binding on the Advisor and its successors and assigns, provided, however, that the rights and obligations of the Advisor may not be assigned without the consent of the Client.

**14. NOTICE.**

Written notices required under this Agreement shall be sent by regular mail, certified mail, overnight delivery or courier, and shall be deemed given when received at the parties' respective addresses shown below. Either party must notify the other party in writing of a change in address.

Client's Address

City of Gillette, Wyoming  
201 E. 5<sup>th</sup> Street  
Gillette, WY 82716  
Attn: Michelle Henderson, Finance Director

Advisor's Address

PFM Asset Management LLC  
555 Briarwood Circle  
Suite 333  
Ann Arbor, MI 48108  
Attn: Brian Quinn

With copy to:

PFM Asset Management LLC  
1735 Market Street  
43<sup>rd</sup> Floor  
Philadelphia, PA 19103  
Attn: Controller

**15. APPLICABLE LAW.**

The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts situated within the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the Sixth Judicial District, Campbell County, Wyoming or the United States District Court for the District of Wyoming. The



parties intend and agree that the Client does not waive governmental immunity by entering into this Agreement and specifically retains governmental immunity and all defenses available to it pursuant to WYO. STAT. §§ 1-39-101-120 and all other applicable law.

#### **16. EXECUTION AND SEVERABILITY.**

Each party to this Agreement represents and warrants that the person or persons signing this Agreement on behalf of such party is authorized and empowered to sign and deliver this Agreement for such party. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

#### **17. GOVERNMENTAL IMMUNITY.**

The Client does not waive governmental immunity by entering into this Agreement and specifically retains all immunities and defenses available to it pursuant to WYO. STAT. §§ 1-39-101-120 and all other applicable law. Designations of venue, choice of law, enforcement actions, dispute resolution and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental immunity shall be construed in favor of governmental immunity.

#### **18. AVAILABILITY OF FUNDS.**

Each payment obligation of the Client is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by Advisor, the Agreement may be terminated by the Client at the end of the period for which the funds are available. The Client shall notify Advisor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Client in the event this provision is exercised, and the Client shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Client to terminate this Agreement to acquire similar services from another party.

#### **19. INDEMNIFICATION**

The Advisor shall indemnify, defend, and hold harmless the Client and its officers, agents, employees, successors, and assignees from any and all claims, lawsuits, losses, and liability arising out of Advisor's negligent or intentional failure, to perform any of Advisor's duties and obligations hereunder or in connection with the negligent performance of Advisor's duties or obligations,



including but not limited to any claims, lawsuits, losses, or liability arising out of Advisor's negligent or intentional actions.

**20. COMPLIANCE WITH LAWS.**

The Advisor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.

**21. WAIVER.**

The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the date set forth in the first paragraph of this Agreement.

**PFM ASSET MANAGEMENT LLC**

By: Brian K. Quinn  
Name: Brian K. Quinn  
Title: Managing Director

**CITY OF GILLETTE, WYOMING**

By: \_\_\_\_\_  
Name: Louise Carter-King  
Title: Mayor

(SEAL)  
ATTEST:

\_\_\_\_\_  
Cindy Staskiewicz, City Clerk