

**CITY OF ROYAL CITY
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, is made and entered into this _____day of January, 2020 by and between the CITY OF ROYAL CITY, a Washington municipal corporation, hereinafter referred to as the "OWNER" and KARE SOLUTIONS, LLC, a Washington limited liability company registered to do business in Washington State, hereinafter referred to as the "CONSULTANT."

1. SCOPE OF SERVICES.

The CONSULTANT shall be compensated for performing such services and accomplishing such tasks as are identified and designated as CONSULTANT responsibilities throughout this Agreement and as detailed in Exhibit "A" attached hereto and incorporated herein.

2. TERM.

This Contract shall begin on January, 2020, and shall run through December, 2021, unless sooner terminated according to the provisions herein. This Contract may be extended by mutual consent of both parties.

3. REPORTS AND INSPECTIONS.

- A. The CONSULTANT, at such times and in such forms as the OWNER may require, shall furnish to the OWNER such statements, records, reports, data, and information as the OWNER may request pertaining to matters covered by this Agreement. All of the reports, information data, and other related materials, prepared or assembled by the CONSULTANT under this Agreement will be treated as confidential insofar as is allowed by Washington State laws regarding disclosure of public information.
- B. The CONSULTANT shall at any time during normal business hours and as often as the OWNER may deem necessary, make available for examination all of his records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the OWNER or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The OWNER shall receive a copy of all audit reports made by the agency or firm as to the CONSULTANT'S activities. The OWNER may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the CONSULTANT'S activities which relate, directly or indirectly, to this Agreement.

4. INDEPENDENT CONTRACTOR RELATIONSHIP.

- A. The parties intend that an independent CONSULTANT/OWNER relationship will be created by this Agreement. The OWNER is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the CONSULTANT. The CONSULTANT will be solely and entirely responsible for his acts during the performance of this Agreement.
- B. In the performance of the services herein contemplated the CONSULTANT is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the OWNER and shall be subject to the OWNER'S general rights of inspection and review to secure the satisfactory completion thereof.

- C. The CONSULTANT is an independent contractor not employed by the City. The CONSULTANT shall make no claims for benefits of employment against the City, including but not limited to sick leave, medical insurance, coverage under the City's labor and industries policy, vacation benefits, retirement or unemployment.

5. HOLD HARMLESS, INDEMNIFICATION, INSURANCE.

Each party shall, at its sole expense, fully indemnify, defend and hold harmless the other party, and in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the indemnifying party or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of the indemnifying party or its officers, agents, employees, or contractors or to which the indemnifying party or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Agreement or applicable law; arising out of or alleged to arise out of the indemnifying party's failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington or any local agency applicable to the indemnifying party in its business. Nothing herein shall be deemed to prevent the indemnified party, its officers, or its employees from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve the indemnifying party from its duty of defense against liability or of paying any judgment entered against the indemnified party, its officers, or its employees.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The Consultant shall procure and maintain for the duration of the Agreement,

Professional Liability (Errors and Omissions) Insurance on an occurrence or per claim basis against any claims that may arise from or in connection with the performance of the work hereunder by the Consultant, its employees, agents or subcontractors. The cost of such insurance shall be borne by the Consultant. Consultant shall maintain limits on such insurance in the amount of \$1,000,000.00 per claim or occurrence with an aggregate of \$2,000,000.00. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officers, officials, employees, agents, representatives or volunteers.

Consultant's insurance coverage shall be primary as respects the Owner, its officers, officials, employees, agents, representatives or volunteers. Any deductibles or self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, the insurer shall reduce or eliminate such deductibles and/or self-insured retentions shall not apply to the Consultant's liability to the Owner and shall be the sole responsibility of the Consultant. Any insurance maintained by the Owner shall be in excess of the Consultant's insurance and shall not contribute with it.

Consultant agrees to provide the Owner with certificates of insurance evidencing the required coverage before execution of this agreement. Each insurance policy required by this clause shall be written on a "per claim form" for professional liability insurance and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after sixty (60) days prior written notice by certified mail, return receipt requested, has been given to the Owner. The Owner reserves the right to require complete, certified copies of all required insurance policies, at any time.

6. TREATMENT OF ASSETS.

Title to all property furnished by the OWNER shall remain in the name of the OWNER, and the OWNER shall become the owner of the work product and other documents, if any, prepared by the CONSULTANT pursuant to this Agreement.

7. COMPLIANCE WITH LAWS.

- A. The CONSULTANT, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- B. The OWNER specifically agrees to pay any applicable business and occupation (B & O) taxes which may be due on account of this Agreement.

8. ASSIGNMENT/SUBCONTRACTING.

- A. The CONSULTANT shall not assign his performance under this Agreement or any portion of this Agreement without the written consent of the OWNER, and it is further agreed that said consent must be sought in writing by the CONSULTANT not less than thirty (30) days prior to the date of any proposed assignment. The OWNER reserves the right to reject without cause any such assignment.
- B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.
- C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the OWNER.

9. CHANGES.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

10. MAINTENANCE AND INSPECTION OF RECORDS.

- A. The CONSULTANT shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all

reasonable times to inspection, review, or audit, by the OWNER, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

- B. The CONSULTANT shall retain all books, records, documents and other material relevant to this agreement, for six (6) years after its expiration. The CONSULTANT agrees that the OWNER or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

11. PROFESSIONAL STANDARDS.

The CONSULTANT shall be responsible to the level of competency presently maintained by other practicing professionals in the same type of work in the City for the professional services furnished under this agreement. The CONSULTANT shall maintain in good standing at all times while performing under this Agreement a valid certification as a Group II Wastewater Treatment Plant Operator issued by the Washington State Department of Ecology.

12. TERMINATION.

- A. Termination for Convenience. This agreement may be terminated by either party by giving thirty (30) days written notice to the other party. If this Agreement is terminated, the CONSULTANT shall be paid at the time of termination for services performed to that date at the next regular date for payment under the terms of this Agreement. The CONSULTANT agrees to peacefully surrender to the OWNER or the OWNER'S designee all plans, reports or materials which came into the possession of the CONSULTANT as a result of his execution of this Agreement or in the course of the execution of this Agreement. Upon receipt of notice of termination, the CONSULTANT shall promptly submit a termination claim to the OWNER. If the CONSULTANT has any property in its possession belonging to the OWNER, the CONSULTANT will account for the same, and dispose of it in the manner directed by the OWNER.
- B. Termination for Cause. If the CONSULTANT fails to perform in the manner called for in this Agreement, or if the CONSULTANT fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days written notice thereof, the OWNER may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the CONSULTANT setting forth the manner in which the CONSULTANT is in default. The CONSULTANT will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

13. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

14. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

15. JURISDICTION AND VENUE.

- A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.
- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Grant County, Washington.

16. SEVERABILITY.

- A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

17. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

The parties have caused this Agreement to be executed the day and year first hereinabove written.

OWNER:

by: P. Kent Andersen, Mayor
CITY OF ROYAL CITY
P.O. Box 1239
Royal City, Washington 99357

CONSULTANT:

By:_____ (title)

EXHIBIT "A" SCOPE OF SERVICE:

I. SERVICES MANDATED BY DEPARTMENTS OF HEALTH AND ECOLOGY

Public health is protected through competent operators of public water systems. Operator competency is demonstrated through certification. The person in responsible charge of the operation of all public wastewater treatment systems is required to be certified.

AResponsible charge@ means the person(s) or firm(s) designated by the owner to be the certified operator who makes the decisions regarding the daily operational activities of a public wastewater treatment system, including, but not limited to, decisions concerning process control and system integrity.

The typical public health related responsibilities and activities associated with the operation of a public wastewater treatment system include the following:

1. Ensure that all daily operation and maintenance activities of the wastewater treatment system are completed in accordance with acceptable public health practices and wastewater industry standards.
2. Perform and / or supervise water quality monitoring, maintain adequate records and take follow-up action, if necessary, to comply with state and federal wastewater regulations.
3. Implement preventative maintenance programs, inspect treatment and other system components for malfunctions, keep adequate records, and make needed repairs.
4. Analyze / review recording instrument readings and laboratory tests, determine sites and causes of any malfunctions; adjust various treatment processes or other components accordingly; and maintain a record of these.
5. Determine remedial actions in emergencies,

II. SERVICES PROVIDED AS REQUIRED AND / OR REQUESTED

1. Perform the responsibilities and duties of Public Works Director related to the wastewater treatment system as outlined in the attached AJob Description@
2. Review, inspect, supervise, advise or otherwise provide input on wastewater treatment system construction projects, upgrades, and / or rehabilitations.
3. Attend council meetings as requested to report on system operation or other issues.
4. Provide assistance or training to city staff on public works issues, procedures, or other areas where assistance is needed.
5. All work requested shall be authorized in writing by the city prior to any action by the CONSULTANT.

III. COMPENSATION

1. The CONSULTANT shall be paid a fee of \$____ per month as compensation for acting as the operator of record and for performing the duties of the Public Works Director related to the wastewater treatment system as set forth in the attached AJob Description@..
2. The CONSULTANT shall provide to the OWNER at the end of each month a billing to include a detailed description of all work performed.
3. The OWNER shall make payment to the CONSULTANT for the billed services following the regularly scheduled City Council meeting of each month.