

**EAGLE MOUNTAIN CITY
CITY COUNCIL MEETING
OCTOBER 7, 2014**

TITLE:	AGREEMENT – Consideration of a Professional Services Agreement with Jackson Engineering, LLC		
FISCAL IMPACT:	\$80,000.00		
APPLICANT:	Eagle Mountain City		
GENERAL PLAN DESIGNATION	CURRENT ZONE	ACREAGE	COMMUNITY
N/A	N/A	N/A	

NOTICES:

- Posted in 2 public places
- Posted on City webpage
- Public Notice Webpage

REQUIRED FINDINGS:

**Public Works Board
Recommendation**

Vote: N/A

**Prepared By:
Jeremy Cook**

NOTES/COMMENTS:

RECOMMENDATION:

That the City Council approve the Professional Services Agreement with Jackson Engineering, LLC

BACKGROUND:

The White Hills Special Service District (WHSSD) is a Special Service District that was established by Utah County for the purpose of providing sewer service to residents in White Hills. WHSSD disposes of its sewage in a lagoon system that is failing and no longer able to properly handle the sewage from existing White Hills residents. In addition, there are numerous deficiencies in the existing sewer system that need to be corrected in order for the system to function correctly.

In September 2010, as part of the Pole Canyon Annexation Agreement, the City entered into a Facilities and Service Obligation Transfer Agreement with WHSSD. The Transfer Agreement contemplated that the City would acquire the sewer facilities in White Hills and provide sewer service in the area upon certain events.

In order to remedy the failing lagoon system, it is necessary to construct a lift station and pipeline to allow the sewage to flow to the City's treatment facility. The City has contracted with Jackson Engineering to complete a preliminary design of the System and the City has obtained funding commitments (grant/loan) from the State for improvements. The approval of this Agreement is the next step in finalizing the grant/loan from the State.

It is estimated that the monthly sewer bill for Pole Canyon residents will be \$58.14.

Professional Services Agreement

JACKSON ENGINEERING, LLC

Date: July 21, 2014

3376 Stonehill Lane, Cottonwood Heights, UT 84121

Eagle Mountain ("CLIENT") hereby authorizes JACKSON ENGINEERING, LLC ("ENGINEER"), a Utah company, to provide the services described below subject to the terms and conditions set forth below and on the reverse side hereof.

A. CLIENT INFORMATION:

CLIENT NAME Eagle Mountain			
REPRESENTATIVE Dave Norman			
STREET ADDRESS / PO BOX 1650 E. Stagecoach Run	CITY Eagle Mountain	STATE UT	ZIP CODE 84005
PHONE # (801) 789-6671	FACSIMILE #		
OWNER'S NAME			
COPIES TO BE SENT TO (IF APPLICABLE)			

B. PROJECT DESCRIPTION (attach additional sheets if necessary):

PROJECT NAME Eagle Mountain/White Hills Sewer Project
PROJECT LOCATION Eagle Mountain, UT
ESTIMATED BEGIN / END DATES July 2014 through December 2014

- C. ENGINEER'S SERVICES:** ENGINEER shall provide the services set forth in Exhibit A, which shall be attached to and made a part of this document. Services not expressly set forth in Exhibit A or otherwise incidental to or implicit in those services, as determined solely by ENGINEER, are not a service of ENGINEER.
- D. COMPENSATION:** ENGINEER shall be compensated as described in Article 2 and Exhibit B. CLIENT shall pay a retainage fee of \$ 0 prior to commencement of ENGINEER's services. Said fee shall be applied to the final invoice for services provided hereunder.

Having read, understood and agreed to the foregoing, **and the terms and conditions set forth on the reverse side hereof**, CLIENT and ENGINEER, by and through their authorized representatives, have subscribed their names hereto effective the last date appearing below.

CLIENT



By (print) :
Title:
Date:

JACKSON ENGINEERING, LLC



By (print) : Steven L. Jackson
Title: President
Date: July 21, 2014

ARTICLE 1 – GENERAL TERMS AND CONDITIONS

- 1.1 ENGINEER, et al. ENGINEER and its members, directors, officers, agents, representatives, employees, consultants or any of them.
- 1.2 CLIENT A person or agency who engages the professional advice or services of another.
- 1.3 Representatives ENGINEER and CLIENT shall each designate in writing a person authorized to act as their representative. Said persons shall serve as sole intermediaries between ENGINEER and CLIENT and shall be authorized to bind their respective principals.
- 1.4 Professional Qualifications The firm of Jackson Engineering, LLC, a Utah Company, is duly authorized and licensed to practice engineering in the State of Utah. The ENGINEER represents that it has the necessary expertise, experience, and is properly qualified and licensed for this work.
- 1.5 Performance Standard ENGINEER's services hereunder shall be rendered consistent with and judged solely by the skill and care ordinarily exercised by members of the same profession performing like services in the State of Utah at the same time. ENGINEER disclaims any and all warranties, express or implied, regarding the quality of its services or the instruments thereof, including but not limited to warranties of fitness, merchantability, or compliance with federal, state, or local laws, rules, regulations, ordinances, or design or building codes or standards.
- 1.6 ENGINEER as Independent Contractor The ENGINEER will furnish services as an independent contractor and not as an employee of the CLIENT. The ENGINEER is not entitled to any medical coverage, life insurance, or participation in any benefits afforded to the CLIENT's regular employees. As an independent contractor, the ENGINEER will be responsible for its own overhead costs and expenses (such as taxes, office space, employee benefits, etc.).
- 1.7 ENGINEER not to Engage in Conflicting Activities During the time of this Agreement, the ENGINEER will not enter into any activity, employment, or business arrangement which conflicts with CLIENT's interests or ENGINEER's obligations under this Agreement. In view of the sensitive nature of ENGINEER's status, the CLIENT shall have the option of terminating this Agreement at any time if, in its sole judgement, a conflict of interest exists or is imminent. The ENGINEER will advise the CLIENT of its position with respect to any activity, employment, or business arrangement contemplated by the ENGINEER, which may be relevant to this Paragraph.
- 1.8 Proprietary Information The ENGINEER will treat as proprietary any information belonging to the CLIENT or any third parties disclosed to the ENGINEER in course of ENGINEER's services.
- 1.9 Assignments Neither party shall assign its rights or delegate its duties under this agreement without the prior, express, written consent of the other. ENGINEER may subcontract services which would be subcontracted in the normal course of business such as surveying and materials testing, without such consent.
- 1.10 Supplied Information ENGINEER, et al. are entitled to rely on any and all information supplied by, through or on behalf of CLIENT and, absent an express agreement to do so, have no legal or contractual duty to verify the accuracy of such information. CLIENT waives any and all Claims against ENGINEER, et al. arising out of actual or alleged deficiencies in any such information and agrees to hold harmless, indemnify and defend ENGINEER, et al. therefrom; excepting those arising out of the indemnitee's sole negligence.
- 1.11 Ownership of Documents All plans, specifications, reports, notes, data, logs, diaries, and other documents, regardless of medium or content, prepared by or on behalf of ENGINEER, et al. are instruments of their respective professional services and shall remain their property. Upon payment to ENGINEER of all sums due hereunder, CLIENT is granted a non-exclusive, unassignable license to use said instrument on and for this project. Such instruments are intended for use solely by CLIENT as an integrated set on this project. Dissemination, modification or use on other projects of any and all such instruments without ENGINEER's prior express written consent shall be at CLIENT's sole risk. CLIENT waives and agrees to hold harmless, indemnify and defend ENGINEER, et al. from and against any and all Claims against ENGINEER, et al. arising out of any such nonpermissive dissemination, modification or use; excepting those arising out of the indemnitee's sole negligence.
- 1.12 Termination Either party may terminate this Agreement upon 15 days notice by registered or certified mail, return receipt requested, addressed to the other party. The 15 days shall be measured from the date the notice is posted. If this Agreement is terminated by either party, the CLIENT shall only be liable for payment and consulting fees incurred as a result of work actually performed prior to the effective date of the termination and any work required to organize and deliver to the CLIENT any material developed during the course of the work.
- 1.13 Amendments This Agreement may be amended only by written instrument expressly referring hereto and duly signed by the parties. This Agreement constitutes the entire and integrated agreement between the parties and supersedes all prior or contemporaneous negotiations, representations and/or agreements, whether written or oral.

ARTICLE 2- COMPENSATION

- 2.1 Progress Payments CLIENT will be invoiced at the end of the first calendar month following the effective date of this Agreement and at the end of each calendar month thereafter. Invoices shall reflect billing for work performed by ENGINEER during the month invoiced. Payment on an invoice is due upon receipt of the invoice. In the Event of a dispute regarding an invoice, CLIENT shall notify the ENGINEER of the objection with fifteen (15) days from the date of the invoice, give reasons for the objection, and shall pay all undisputed amounts as per this Article. Engineer may assess a carry charge of 1.5 percent per month on progress payments not made within thirty (30) days of the date of invoice, which charge CLIENT warrants will be paid on demand. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. The additional charge shall not apply to any disputed amount resolved in favor of the CLIENT. ENGINEER may, in its sole discretion and without notice, suspend its services hereunder should CLIENT not pay in full any amount invoiced within forty-five (45) days of the date of invoice. ENGINEER further reserves the right to withhold from CLIENT any instruments of ENGINEER's services pending payment on CLIENT's account.

- 2.2 Reimbursable Expenses Expenditures made by the ENGINEER, its employees or its consultants in the interest of the project, including but not limited to: transportation, subsistence and lodging when traveling in connection with the project; long distance or toll telephone calls, telegrams, messenger service, field office expenses, and fees paid for securing approval of authorities having jurisdiction over the project; reproduction, postage and handling of drawings, specifications, reports or other project-related documents; computer time including charges for proprietary programs, renderings or models.

ARTICLE 3- SPECIAL TERMS AND CONDITIONS

- 3.1 Construction Estimates ENGINEER's opinions, if any, of probable construction costs, quantities or times are subject to change and are contingent upon persons and factors over which ENGINEER has no control. ENGINEER does not guarantee the accuracy of such estimates.
- 3.2 Record Documents. Any record documents provided or drafted by ENGINEER are based upon information provided by the contractor, who is to document variations between design and actual construction. ENGINEER is entitled to rely upon and has no legal or contractual duty to verify the accuracy of such information and does not warrant the accuracy of record documents.
- 3.3 Access. CLIENT warrants timely access for ENGINEER, et al. to all property reasonably necessary to the performance of their services.
- 3.4 Problem Notification CLIENT will provide prompt written notice to the ENGINEER whenever the CLIENT observes or otherwise becomes aware of any defect in the services being performed under this agreement. The purpose of the notice is to allow the ENGINEER an opportunity to correct the problem consistent with its desire to provide quality engineering services.
- 3.5 Construction Services. ENGINEER's construction observation or monitoring services, if any or unless specified otherwise, are neither exhaustive nor continuous and consist solely of periodic visits to the project site to determine whether construction is progressing in general conformance with the plans and specifications. ENGINEER is not responsible for the timeliness, means, methods or sequences of construction nor for the safety of workers or others at or near the project site. ENGINEER does not guaranty the performance of the contractor, subcontractors, suppliers or others providing labor, material or services for the project, nor is it responsible for their acts, errors or omissions. Unless expressly agreed otherwise, ENGINEER's compensation for any such services contemplates one (1) construction contract being let and construction completion within the specified time period. Should more than one (1) construction contract be let or said period for construction be exceeded through no fault of ENGINEER, ENGINEER's compensation shall be equitably adjusted. Should ENGINEER not be retained to provide construction observation, monitoring, or similar services, CLIENT waives and agrees to hold harmless, indemnify and defend ENGINEER, et al. from and against any and all Claims against ENGINEER, et al. based in whole or in part upon actual or alleged defects in construction, workmanship and/or materials; excepting those arising out of the indemnitee's sole negligence.
- 3.6 Site Conditions. Unless expressly agreed otherwise, ENGINEER's services and compensation contemplate (i) the absence of Hazardous Materials on, in or under the project site or nearby properties and (ii) site conditions like those represented in information provided by, through or on behalf of CLIENT and/or those reasonably anticipated for a site of this nature and locality. Should such Materials be discovered or should actual conditions vary materially from those represented or anticipated, either party shall have an absolute and unconditional right to terminate or suspend this agreement. CLIENT waives and agrees to hold harmless, indemnify and defend ENGINEER, et al. from and against any and all Claims against ENGINEER, et al. actually or allegedly, directly or indirectly arising out of or related to (i) the detection, generation, presence, escape, release, discharge, movement, seepage, stabilization, abatement, handling, removal, transportation, storage or disposal of Hazardous Materials and/or (ii) any material change in represented or anticipated conditions; excepting those arising out of the indemnitee's sole negligence.

ARTICLE 4 – CLAIMS AND DISPUTES

- 4.1 Claims (or Claim). Shall be defined as any and all claims, actions, causes of action, rights, demands, liabilities, damages, costs, expenses, and/or fees (incl. expert and attorneys) of any nature whatsoever actually or allegedly, directly or indirectly arising out of or related to the project, whether or not accrued, known, suspected, discovered, discoverable, and/or latent.
- 4.2 Dispute Resolution. Any dispute related to this agreement, either parties' performance hereunder, and/or ENGINEER, et al.'s services shall be submitted to mediation before a mutually acceptable mediator prior to initiation of litigation or other formal adjudicative procedures.
- 4.3 NOT USED
- 4.4 Jurisdiction; Venue. This agreement shall be interpreted and enforced according to the laws of the State of Utah. Venue of any litigation arising out of or related to this agreement or the services hereunder provided shall be exclusively in Salt Lake County, State of Utah.
- 4.5 Force Majeure. Any default in the performance of this agreement caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: act of God, government, or public enemy; strike; embargo; fire, flood, epidemic, unusually severe weather and/or other extraordinary natural event or disaster; and/or quarantine.
- 4.6 Attorneys Fees. In the event of default hereunder, the defaulting party agrees to pay all costs incurred by the non-defaulting party as a result thereof, including reasonable attorney's and expert's fees, whether incurred through formal legal proceedings or otherwise.
- 4.7 Severability Waiver. In the event any provision of this agreement is invalid or unenforceable, the remaining provisions shall remain valid and enforceable. Waiver of a breach of any provision is not a waiver of a subsequent breach of the same or any other provision.
- 4.8 Third Party Rights. No third party beneficiary rights are created by this agreement, nor does this agreement create any cause of action in favor of any third party against either party hereto.
- 4.9 Limitation Periods. Statutory periods of limitation for CLIENT Claims against ENGINEER, et al., shall begin to run no later than the date of substantial completion, the date of occupancy of the project or the portion of the project as to which the Claim is made, or the date of abandonment of the project, whichever date is earliest.

Exhibits A and B Professional Services Agreement

JACKSON ENGINEERING, LLC

3376 Stonehill Lane, Salt Lake City, UT 84121

Date: July 21, 2014

Appended to and made a part of the Professional Services Agreement ("Agreement") by and between

EAGLE MOUNTAIN ("CLIENT") and JACSKON ENGINEERING, LLC ("ENGINEER").

Exhibit A: DRAFT SCOPE OF WORK

Eagle Mountain/Pole Canyon Wastewater Facility Plan and Preliminary Engineering Report

Prepare a Wastewater Facility Plan and Preliminary Engineering Report to include the following information:

1. Completion of environmental analysis and reporting relative to the project corridor as required by DWQ. Preliminary environmental analysis was conducted as part of the Preliminary Engineering Report as needed for the funding application process. This work will be completed as needed for NEPA requirement to establish a Finding Of No Significant Impact (FONSI).
2. Topographic survey of project corridor as needed for detailed design and development of construction plans and documents.
3. Prepare project plans and specifications for the sewer force main, sewer pump station, power service, spot repairs to collection system.
4. Prepare bidding documents for the project.
5. Assist with the construction bidding process including preparation of advertisements, responding to questions, preparation of addendum, summarizing bids, and recommendation of construction contract(s).
6. During construction services including contract management, submittal reviews, field observations, construction survey, project closeout, preparation of record drawings, coordination with DEQ with funding.

Exhibit B: SERVICES AND COMPENSATION

Services are provided by Fixed Fee amounts below which includes all reimbursable expenses. Changes in Scope of Work will be compensated based on hours worked at the Fee Rates listed below. Hourly rate includes payroll, payroll overhead, general overhead, and profit. Rates are subject to change according to market conditions

- | | |
|--|--------------------|
| 1. Project Planning and Preliminary Engineering..... | \$6,000.00 |
| 2. Engineering Design | \$54,000.000 |
| 3. During Construction Services..... | <u>\$20,000.00</u> |
| TOTAL ENGINEERING FEE | \$80,000.00 |

Resource Rate Schedule 2014

Project Manager	\$135/hour
Survey Crew	\$115/hour
Project Engineer	\$95/hour
Sr. Designer	\$90/hour
Clerical	\$50/hour
Mileage	\$0.55/mile

MANPOWER AND COST ESTIMATE

<u>Client:</u> Eagle Mountain City	<u>Personnel Assigned</u>
<u>Project:</u> Pole Canyon Sewer Project Engineering	1 Project Manager \$135 /hr
<u>Description:</u> Engineering services for the sewer project from WHSSD lagoons to Eagle Mtn treatment facility	2 Sr. Surveyor \$115 /hr
	3 Project Engineer \$85 /hr
	4 Sr. Designer \$75 /hr
	5 Inspector \$75 /hr

Task Description		Hours By Personnel Category						Total Hours	Total Labor Charges	Other Direct Costs	Other Subcon-sultants Costs	Total Other Direct Charges	Total Fee (Labor + TODC)
		1	2	3	4	5	6						
001	Project Planning and Preliminary Engineering												
001	Project management and coordination	6						6	\$810			\$0	\$810
002	Coordination with stakeholders for design corridor and facilities	3						3	\$405			\$0	\$405
003	Field survey control work	3	8					11	\$1,325	\$132		\$145	\$1,470
004	Environmental NEPA documentation	8		12				20	\$2,100			\$0	\$2,100
005	Confirm easements and permits	3						3	\$405			\$0	\$405
006	Coordination with DWQ staff	3						3	\$405			\$0	\$405
007	Support WQB loan process	3						3	\$405			\$0	\$405
		29	8	12	0	0	0	49	\$5,855	\$132	\$0	\$145	\$6,000
002	Engineering Desgin												
001	Field Survey	8	80		12			100	\$11,180	\$500		\$550	\$11,730
002	Sewer Pipeline Design	93			40			133	\$15,555	\$200		\$220	\$15,775
003	Sewer Pump Station Design	95			30			125	\$15,075	\$154		\$169	\$15,244
004	Coordination with DWQ Reviews	16			8			24	\$2,760	\$150		\$165	\$2,925
005	Coordination with Eagle Mtn City reviews	16			8			24	\$2,760	\$150		\$165	\$2,925
006	Cost Estimates	16						16	\$2,160			\$0	\$2,160
007	Prepare specifications and contract documents	24						24	\$3,240			\$0	\$3,240
		268	80	0	98	0	0	446	\$52,730	\$1,154	\$0	\$1,269	\$54,000
003	During Construction Serivces												
001	Bid Process - Sewer Pipeline	10	8			28		46	\$4,370			\$0	\$4,370
002	Bid Process - Sewer Pump Station	10				21		31	\$2,925			\$0	\$2,925
003	During Construction Site Visits	10	20					30	\$3,650			\$0	\$3,650
004	Contract Management	18						18	\$2,430	\$2,000		\$2,200	\$4,630
005	Loan Closing Process	16						16	\$2,160			\$0	\$2,160
006	As-Built Plans Pipeline	4			8			12	\$1,140			\$0	\$1,140
007	As-Built Plans Pump Station	4			8			12	\$1,140			\$0	\$1,140
		72	28	0	16	49	0	165	\$17,815	\$2,000	\$0	\$2,200	\$20,000
PROJECT TOTALS		72	28	0	16	49	0	165	\$17,815.00	\$2,000.00	\$0.00	\$2,200.00	\$80,000.00

Avg. Rate/hour = \$108