

RESOLUTION NO.

12-08

**TITLE: A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH KETTERLING, BUTHERUS & NORTON ENGINEERS, LLC, FOR TOWN ENGINEER SERVICES**

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON, COLORADO, AS FOLLOWS:

Section 1. The Professional Services Agreement for Town Engineer Services between Ketterling, Butherus & Norton Engineers, LLC, and the Town of Hudson, Colorado, is made and entered into on this 1<sup>st</sup> day of February, 2012, is hereby approved and the Mayor is authorized to execute the same on behalf of the Town.

INTRODUCED, READ and PASSED this 1<sup>st</sup> day of February, 2012.

TOWN OF HUDSON, COLORADO



ATTEST:

  
Linnette Barker, CMC, Town Clerk

  
Neal Pontius, Mayor

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this 1st day of February, 2012 by and between the TOWN OF HUDSON, State of Colorado (hereinafter referred to as the "Town") and Ketterling, Butherus & Norton Engineers, LLC, (hereinafter referred to as "Engineer").

### **RECITALS:**

A. The Town requires professional engineering services from time to time as directed by the Board of Trustees or its designee.

B. Engineer has held itself out to the Town as having the requisite expertise and experience to perform civil engineering services as may be required by a municipality.

C. Engineer shall serve as the Town Engineer, and shall represent the Town in engineering related matters as directed by the Board of Trustees or its designee.

NOW, THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Engineer shall provide to the Town professional engineering services as follows.

### **I. SCOPE OF SERVICES**

The scope of services is attached hereto as **Exhibit A**, and incorporated herein by this reference. Engineer shall furnish all labor and materials to perform the work and services required for the complete and prompt execution and performance of all duties, obligations and responsibilities for projects as directed.

### **II. THE TOWN'S OBLIGATIONS/CONFIDENTIALITY**

The Town shall provide Engineer with reports and such other data as may be available to the Town and reasonably required by Engineer to perform hereunder. No project information shall be disclosed by Engineer to third parties without prior written consent of the Town or pursuant to a lawful court order directing such disclosure. All documents provided by the Town to Engineer shall be returned to the Town. Engineer is authorized by the Town to retain copies of such data and materials at Engineer's expense.

### **III. OWNERSHIP OF WORK PRODUCT**

Upon payment to Engineer pursuant to this Agreement, all work, data, drawings, design standards, plans, reports, computer input and output, analyses, maps, surveys, or any other materials developed for this Project are, and shall be, the sole and exclusive property of the Town. However, any reuse of the documents by the Town without prior written authorization by Engineer other than for the specific intended purpose of this Agreement will be at the Town's sole risk. Engineer will provide the Town with a ten (10) day written notice prior to disposal of

Project documents it has retained, during which time the Town may take physical possession of same at the storage site.

#### **IV. COMPENSATION**

A. Payment shall be made in accordance with the schedule of charges in **Exhibit A**, which is attached hereto and incorporated herein by this reference, which may be changed from time to time by written Addendum to this Agreement. Invoices will be itemized and include hourly breakdown for all personnel and other charges.

B. Engineer shall submit monthly statements requesting payment. Such request shall be based upon the amount and value of the work and services performed by Engineer under this Agreement, except as otherwise supplemented or accompanied by such supporting data as may be required by the Town.

1. All invoices, including Engineer's verified payment request, shall be submitted by Engineer to the Town no later than the twenty-fourth (24th) day of each month for payment pursuant to the terms of this Agreement. In the event Engineer fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Engineer defers its right to payment pursuant to said late invoice until the twenty-fourth (24th) day of the following month.

2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice as provided by this Agreement.

C. The Town has the right to ask for clarification on any Engineer invoice after receipt of the invoice by the Town.

D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the legal rate of interest. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Engineer may, after giving seven (7) days' written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days' written notice, Engineer may terminate this Agreement. Upon receipt of payment in full for services rendered, Engineer will continue with all authorized services as soon as practicable.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the Town) required by this Agreement have been turned over to and approved by the Town, and upon receipt by the Town of Engineer's certification that services required herein by Engineer have been fully completed in accordance with this Agreement and all data and reports for the Project.

## **V. COMMENCEMENT AND COMPLETION OF WORK**

All work performed by the Engineer pursuant to this agreement shall be initiated by the Town upon issuance of a written request to the Engineer, approved letter proposal or, at the discretion of the Town, by an addendum to this Agreement.

## **VI. PROFESSIONAL RESPONSIBILITY**

A. Engineer hereby warrants that it is qualified to assume the responsibilities and render the services described herein, and has all requisite corporate authority and professional licenses in good standing required by law.

B. The work performed by Engineer shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.

C. Engineer shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all designs, drawings, specifications, reports and other services furnished by Engineer under this Agreement. Engineer shall, without additional compensation, correct or resolve any errors or deficiencies in its designs, drawings, specifications, reports and other services, which fall below the standard of professional practice.

D. Approval by the Town of drawings, designs, specifications, reports and incidental work or materials furnished hereunder shall not in any way relieve Engineer of responsibility for technical adequacy of the work. Neither the Town's review, approval, or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of the rights under this Agreement, and Engineer shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the Town provided for under this Agreement are in addition to any other rights and remedies provided by law.

## **VII. COMPLIANCE WITH LAW**

The work and services to be performed by Engineer hereunder shall be done in compliance with Engineer's best interpretation of applicable laws, ordinances, rules and regulations.

## **VIII. INDEMNIFICATION**

Engineer agrees to indemnify and hold harmless the Town, its officers, employees and insurers, from and against all liability, claims and demands, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligent act, omission, error,

professional error, mistake, negligence or other fault of Engineer, or any officer, employee, representative or agent of Engineer, or which arise out of any workmen's compensation claim of any employee of Engineer. Engineer agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of Engineer, or at the option of the Town, agrees to pay the Town or reimburse the Town for the defense costs incurred by the Town in connection with, any such liability, claims or demands. Engineer also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss or damage was caused in whole or in part by the act, omission or other fault of the Town, its officers or its employees, the Town shall reimburse Engineer for the portion of the judgment attributable to such act, omission or other fault of the Town, its officers or employees.

## **IX. INSURANCE**

A. Engineer agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Engineer pursuant to Section VIII. Indemnification, above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Engineer shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Section VIII. Indemnification, above, by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

B. Engineer shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Engineer pursuant to Section VIII. Indemnification, above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workmen's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement and Employer's Liability insurance with minimum limits in accordance with Colorado law. Evidence of qualified self-insured status may be substituted for the workmen's compensation requirements of this paragraph.

2. Commercial general liability insurance with minimum combined single limits of six hundred thousand (\$600,000) each occurrence and one million dollars (\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. The policy shall contain a severability of interests provision.

3. Professional liability insurance with minimum limits of six hundred thousand dollars (\$600,000) each claim and one million dollars (\$1,000,000) general aggregate.

4. The policy required by paragraph 2. above shall be endorsed to include the Town and the Town's officers, employees and Engineers as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, its employees or its Engineers shall be excess and not contributory insurance to that provided by Engineer. No additional insured endorsement to the policy required by paragraph 1. above shall contain any exclusion for bodily injury or property damage arising from completed operations. Engineer shall be solely responsible for any deductible losses under any policy required above.

5. The certificate of insurance provided for the Town shall be completed by Engineer's insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to the Town. The completed certificate of insurance shall be sent to:

Town of Hudson  
557 Ash Street  
Box 351  
Hudson, Colorado 80642

6. Failure on the part of Engineer to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of agreement upon which the Town may immediately terminate this Agreement, or at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Engineer to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Engineer from the Town.

7. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

8. The parties hereto understand and agree that the Town, its officers and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, or otherwise available to the Town, its officers or its employees.

## **X. NONASSIGNABILITY**

Neither this Agreement nor any of the rights or obligations of the parties hereto shall be assigned by either party without the written consent of the other.

## **XI. TERMINATION**

This Agreement shall terminate at such time as the work in Section I is completed and the requirements of this Agreement are satisfied, or upon the Town's providing Engineer with thirty (30) days' advance written notice, whichever occurs first. In the event the Agreement is terminated by the Town's issuance of said written notice of intent to terminate, the Town shall pay Engineer for all work previously authorized and completed prior to the date of termination. If, however, Engineer has substantially or materially breached the standards and terms of this Agreement, the Town shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the Town thereafter shall be at the Town's sole risk, unless otherwise consented to by Engineer.

## **XII. CONFLICT OF INTEREST**

The Engineer shall disclose any personal or private interest related to property or business within the Town. Upon disclosure of any such personal or private interest, the Town shall determine if the interest constitutes a conflict of interest. If the Town determines that a conflict of interest exists, the Town may treat such conflict of interest as a default and terminate this Agreement.

## **XIII. VENUE**

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Weld, State of Colorado.

## **XIV. INDEPENDENT CONTRACTOR**

Engineer is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Engineer to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Engineer for all purposes. Engineer shall make no representation that it is the employee of the Town for any purposes.

## **XV. NO WAIVER**

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligations of this Agreement.

This Agreement and the attached Exhibit A constitute the entire Agreement between Engineer and the Town, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed, except as specified herein.

## **XVII. NOTICE**

Any notice or communication between Engineer and the Town which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States mail, addressed as follows:

The Town:	Town of Hudson 557 Ash Street Box 351 Hudson, Colorado 80642 (303) 536-9311
Copy to:	Corey Y. Hoffmann, Esq. Hayes, Phillips, Hoffmann & Carberry, P.C. 1350 17 <sup>th</sup> Street, #450 Denver, Colorado 80202 (303) 825-6444
Engineer:	Michael C. Ketterling, PE Ketterling, Butherus & Norton Engineers, LLC 820 8 <sup>th</sup> Street Greeley, CO 80631 (970) 395-9880



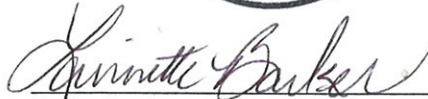
IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.



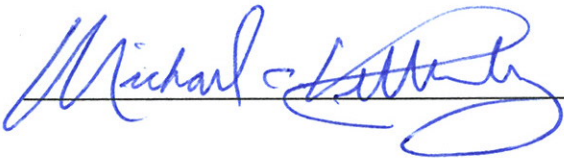
**TOWN OF HUDSON, COLORADO**

By:   
Neal Pontius, Mayor

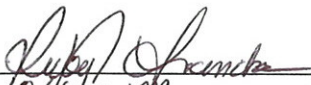
ATTEST:

  
Judy Larson, Town Clerk  
Linnette Barker

**ENGINEER**

By: 

ATTEST:

  
Office Manager, 2-2-2012  
Title Date

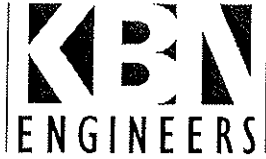


EXHIBIT A

**TOWN ENGINEERING SERVICES**

1. Engineering services to be provided to the Town shall include roadway design, drainage planning and design, development review, water distribution system master planning, water distribution system component design, wastewater system consultation, construction specifications, bidding oversight, and construction inspection for capital projects.
2. An appropriate representative of KBN will attend evening meetings of the Board of Trustees and the Planning Commission as requested by the Town.
3. The Town of Hudson will be billed in accordance with our standard hourly rates (and reimbursable expenses). Normally, a telephone call or an e-mail will result in a quick response to the Town's question or concern. If not, KBN will meet with the appropriate staff member at their convenience.
4. KBN will bill the Town of Hudson on a monthly basis for time spent the previous month, and submit invoices by the 12<sup>th</sup> of the month. If KBN does not work on Hudson projects during the previous month, then no invoice will be sent to the Town. Also, we will not bill the Town for short conversations with staff or quick e-mails responses to questions by Town staff. We have to be engaged for a minimum of 15 minutes to count as project time to the Town.

For capital improvement projects and other design projects, KBN will provide the Town with a design fee estimate prior to receiving authorization to proceed.

5. KBN will review the Hudson development procedures, in coordination with the Town Planner and Town Administrator, and, if applicable, make recommendations to streamline the process.
6. KBN will hire outside consultants for any structural engineering, geotechnical engineering and surveying (King Surveyors) that may be necessary.

**Ketterling, Butherus & Norton Engineers, LLC.**

820 8<sup>th</sup> St. / Greeley, Colorado 80631 / ph 970-395-9880 / fax 970-395-9881

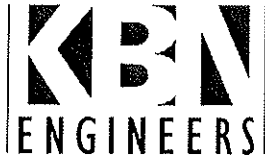


EXHIBIT A, Page 2 of 2

**TOWN OF HUDSON, COLORADO  
2012 TOWN ENGINEER RATES**

<u>PROFESSIONAL</u>	<u>HOURLY RATE</u>
Principal/Project Manager	\$104
Project Engineer	\$ 92
Design Engineer	\$ 82
Computer-Aided Designer/Drafter (CADD)	\$ 70
Administrative Assistant	\$ 43
24" x 36" Prints:	\$2.00/each
24" x 36" Vellum/Mylar:	\$4.00/each
Mileage:	\$0.45/mile
Telephone:	at cost

Any survey services requested or required by the Town to complete Town engineering will be billed as a sub-consultant to KBN Engineers.

**Ketterling, Butherus & Norton Engineers, LLC.**

820 8<sup>th</sup> St. / Greeley, Colorado 80631 / ph 970-395-9880 / fax 970-395-9881