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LETTER AGREEMENT



January 21, 2004



City of Rapid City
C/o Mr. Dan Bjerke
Director of Public Works
Rapid City Public Works Department
300 Sixth Street
Rapid City, SD 57701

Job No. 24892

Subject: Amendment for Water Rights Engineering Services

Dear Mr. Bjerke:

This letter will serve as an amendment to our Letter Agreement dated April 23, 2001. For convenience, this amendment is presented in a form that can be accepted and signed as an agreement between Brown and Caldwell and City of Rapid City, hereinafter "Client."

The scope of services to be performed by Brown and Caldwell under this letter agreement will provide necessary water rights and engineering services as requested by Client.

Compensation for services will be based on time-related charges plus direct costs as described in Exhibit B and will not exceed \$15,000.

The work defined herein shall begin not more than 30 calendar days after Brown and Caldwell receives the signed copy of this letter agreement from you. All work under this contract will be completed according to a schedule agreed to by Client and Brown and Caldwell.

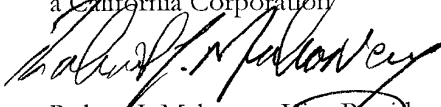
All work will be performed in accordance with Brown and Caldwell's attached **Standard Terms and Conditions (CL-L-TC) dated July 1, 2003**. To accept this proposal, please sign and date two copies and return one copy to Brown and Caldwell within ten days.

CL-L (July 1, 2003)

We look forward to the opportunity to perform the work for you. Please call if you have questions.

Very truly yours,

BROWN AND CALDWELL,
a California Corporation



Robert J. Mahoney, Vice President



Leo Eisel, Project Manager

Billing Rate Schedule
Attachment: CL-L-TC

The undersigned agrees to the Terms and Conditions of this Letter Agreement attached hereto.

CITY OF RAPID CITY

Signature _____

Printed Name _____

Title _____

Date _____

Brown and Caldwell/Client Standard Terms and Conditions

I. SCOPE

Brown and Caldwell (BC) agrees to perform the services described in the scope of work attached hereto which incorporates these terms and conditions. Unless modified in writing by the parties hereto, the duties of BC shall not be construed to exceed those services specifically set forth in the proposal. These terms and conditions and the proposal, when executed by Client, shall constitute a binding agreement on both parties (hereinafter the "Agreement").

II. COMPENSATION

Client agrees to pay for the services in Article I in accordance with the compensation provisions in the proposal. Payment to BC will be made within 30 days after the date of billing. Interest on the unpaid balance will accrue beginning on the 31st day at the maximum interest rate permitted by law.

Time-related charges will be made in accordance with the billing rate referenced in the proposal or Agreement. Direct expenses and Subcontractor services shall be billed in accordance with the proposal or compensation exhibit attached to this Agreement. Otherwise, BC's standard billing rates shall apply. In the event any uncontested portions of any invoice are not paid within 30 days of the date of Consultant's invoice, Consultant shall have the right to suspend work per Article XIV, Suspension of Work.

III. RESPONSIBILITY

STANDARD OF CARE. BC is employed to render a professional service only, and any payments made by Client are compensation solely for such services rendered and recommendations made in carrying out the Work. BC shall perform the services in accordance with generally accepted engineering practices and standards in effect when the services are rendered. BC does not expressly or impliedly warrant or guarantee its services.

In performing construction management services, BC shall act as agent of Client. BC's review or supervision of work prepared or performed by other individuals or firms employed by Client shall not relieve those individuals or firms of complete responsibility for the adequacy of their work.

The presence of BC's personnel at a construction site, whether as on-site representative, resident engineer or construction manager, shall be for the sole purpose of determining that the work is generally proceeding in conformance with the intent of the project specifications and contract documents and does not constitute any form of guarantee or assurance with respect to contractor's performance. BC shall have no responsibility for the contractor's means, methods, techniques, sequences, for safety precautions and programs incident to the contractor's work, or for any failure of contractor to comply with laws and regulations applicable to performing its work.

RELIANCE UPON INFORMATION PROVIDED BY OTHERS. If BC's performance of services hereunder requires BC to rely on information provided by other parties (excepting BC's subcontractors), BC shall not independently

verify the validity, completeness or accuracy of such information unless otherwise expressly engaged to do so in writing by Client.

IV. INDEMNIFICATION

BC agrees to indemnify, defend, and hold Client harmless from and against any liability to the extent arising out of the negligent acts, errors or omissions of BC, its agents, employees, or representatives, in the performance of duties under the Agreement. Regardless of any other term of this Agreement, in no event shall BC be responsible or liable to Client for any incidental, consequential, or other indirect damages.

V. INSURANCE

BC shall maintain during the life of the Agreement the following minimum insurance:

1. **Commercial general liability** insurance, including personal injury liability, blanket contractual liability and broad form property damage liability. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.
2. **Automobile bodily injury and property damage liability** insurance covering owned, non-owned, rented, and hired cars. The combined single limit for bodily injury and property damage shall be not less than \$1,000,000.
3. **Statutory worker's compensation and employers' liability** insurance as required by state law.
4. **Professional liability** insurance with limits of not less than \$1,000,000.

VI. SUBCONTRACTS

BC shall be entitled, to the extent determined to be appropriate by BC, to subcontract any portion of the Work to be performed under this Agreement.

VII. ASSIGNMENT

If the authorized scope of work includes construction activities or the oversight of construction, BC may, at its discretion and upon notice to Client, assign all of its contractual rights and obligations with respect to such activities or services to Brown and Caldwell Constructors, its wholly owned affiliate.

If the authorized scope of work requires professional services to be performed in a jurisdiction in which BC renders professional services solely through a locally registered engineering affiliate for purposes of compliance with professional licensing requirements in that jurisdiction, BC may, in its discretion, upon notice to Client, assign its contractual rights and obligations with respect to such services to such locally registered engineering affiliate.

VIII. INTEGRATION

These terms and conditions and the proposal to which they are attached represent the entire understanding of Client and BC as to those matters contained herein. No prior oral

Brown and Caldwell/Client Standard Terms and Conditions (cont)

or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered except in writing signed by both parties, provided further that any terms and conditions in any client authorization or purchase order issued in connection or under the Agreement which are inconsistent with the Agreement are hereby superseded and shall be of no force and effect.

IX. CHOICE OF LAW/JURISDICTION

This Agreement shall be administered and interpreted under the laws of the state in which the BC office responsible for the project is located. Jurisdiction of litigation arising from the Agreement shall be in that state.

X. SEVERABILITY

If any part of the Agreement is found unenforceable under applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall be in full force and effect.

XI. FORCE MAJEURE

BC shall not be responsible for delays in performing the scope of services that may result from causes beyond the reasonable control or contemplation of BC. BC will take reasonable steps to mitigate the impact of any force majeure.

XII. NO BENEFIT FOR THIRD PARTIES

The services to be performed by BC hereunder are intended solely for the benefit of Client, and no right nor benefit is conferred on, nor any contractual relationship intended or established with any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely on BC's performance of its services hereunder.

XIII. WORK PRODUCT

BC and Client recognize that BC's work product submitted in performance of this Agreement is intended only for the Client's benefit and use. Change, alteration, or reuse on another project by Client shall be at Client's sole risk, and Client shall hold harmless and indemnify BC against all losses, damages, costs and expense, including attorneys' fees, arising out of or related to any such unauthorized change, alteration or reuse.

XIV. SUSPENSION OF WORK

Work under this Agreement may be suspended as follows:

1. **By Client.** By written notice to BC, Client may suspend all or a portion of the Work under this Agreement if unforeseen circumstances beyond Client's control make normal progress of the Work impracticable. BC shall be compensated for its reasonable expenses resulting from such suspension including mobilization and demobilization. If suspension is greater than 30 days, then BC shall have the right to terminate this Agreement in accordance with Article XV, Termination of Work.

2. **By BC.** By written notice to Client, BC may suspend the Work if BC reasonably determines that working conditions at the Site (outside BC's control) are unsafe, or in violation of applicable laws, or the event Client has not made timely payment in accordance with Article II, Compensation, or for other circumstances not caused by BC that are interfering with the normal progress of the Work. BC's suspension of Work hereunder shall be without prejudice to any other remedy of BC at law or equity.

XV. TERMINATION OF WORK

This Agreement may be terminated as follows:

1. **By Client** (a) for its convenience on 30 days' notice to BC, or (b) for cause, if BC materially breaches this Agreement through no fault of Client and BC neither cures such material breach nor makes reasonable progress toward cure within 15 days after Client has given written notice of the alleged breach to BC.
2. **By BC** (a) for cause, if Client materially breaches this Agreement through no fault of BC and Client neither cures such material breach nor makes reasonable progress toward cure within 15 days after BC has given written notice of the alleged breach to Client, or (b) upon five days' notice if Work under this Agreement has been suspended by either Client or BC in the aggregate for more than 30 days.
3. **Payment upon Termination.** In the event of termination, BC shall perform such additional work as is reasonably necessary for the orderly closing of the Work. BC shall be compensated for all work performed prior to the effective date of termination, plus work required for the orderly closing of the Work. Except for termination of BC by Client for cause, BC shall also receive a termination fee equal to 15 percent of the total compensation yet to be earned under existing authorizations at the time of termination.

XVI. NOTICES

All notices required under this Agreement shall be by personal delivery, facsimile or mail to the BC Project Manager and to the person signing the proposal on behalf of the Client, and shall be effective upon delivery to the address stated in the proposal.

SCHEDULE OF HOURLY BILLING RATES

EXHIBIT B COMPENSATION

I. TIME-RELATED CHARGES

Time-related charges are the total hours worked on the Project by each employee, multiplied by the hourly rate for that employee's job classification. The rates are shown on the attached Schedule of Hourly Billing Rates dated January 1, 2004 through December 31, 2004. The Schedule of Hourly Billing Rates will be revised annually on a calendar-year basis. Time-related charges include salary rates, fringe benefits, general and administrative overhead, Associated Project Costs (APC) and profit.

An Associated Project Cost (APC) fee shall be billed at the standard Brown and Caldwell billing rate, Brown and Caldwell's billing rate for APC is \$5.00 per direct labor hour to cover the cost of Network Infrastructure and Information Systems support, CAD and Computer usage, in-house reproduction services including graphics and photocopying, printing, long distance telephone calls including cell phone charges, facsimile, postage, overnight and courier services.

II. DIRECT CHARGES

Direct charges are all charges, other than time-related charges, incurred directly for the Project. Subcontracted services and Other Direct Costs shall be billed at actual cost plus a service charge of 7.5% percent and 7.5% percent, respectively.

Subcontracted services, Other Direct Cost include but are not limited to:

1. Subcontracted services such as drilling, field testing and laboratory analysis.
2. Outside reproduction services, including reproduction of drawings, photocopying, printing and binding.
3. Field equipment rental.
4. Automobile mileage reimbursed to employee at the rate established and updated by the Internal Revenue Services, currently .375 cents per mile, and/or automobile mileage reimbursed for Brown and Caldwell vehicles at .55 cents per mile.
5. Living and traveling expenses of employees when away from their home office.

LIMITATION OF COST AND TIME

Consultant estimates that the cost for services described in Exhibit A shall not exceed \$15,000, and that the time for completion of Project shall be as stated in the Agreement. Consultant shall use its best efforts to perform the work specified within the estimated cost and time.

If Consultant believes the cost will exceed the estimate, Consultant shall notify Client. The notification will include the revised cost estimate and/or the revised time for completion.

Client shall not be obligated to pay Consultant for costs incurred in excess of the estimate unless Client agrees to do so. Consultant shall not be obligated to continue performance under this Agreement or otherwise incur costs in excess of the original estimate unless and until Client agrees to increase the authorized cost.

If increased costs and/or time adjustments are not agreed to by the scheduled completion date, Client shall, on written request by Consultant, terminate this Agreement.

BROWN AND CALDWELL RATE SCHEDULE
January 1, 2004 through December 31, 2004

Classification	Classification Level	Hourly Rate, dollars with APC
Executive	M	203
Executive Engineer/Scientist	L	190
Managing Engineer/Scientist	K	170
Supervising Engineer/Scientist	J	150
Principal Engineer/Scientist	I	135
Senior Engineer/Scientist/Principal Designer	H	118
Engineer III/Senior Designer	G	107
Engineer II/Scientist II Designer/Lead Drafter/Senior Project Coordinator	F	91
Engineer I/Scientist I Senior Drafter/Project Coordinator II/Accountant II	E	73
Project Coordinator I	D	68
Telephone Operator	C	63

NOTES:

Standard Billing Rates will be revised annually on a calendar-year basis.

Billing Rates will be used according to the Classification Level.

An Associated Project Cost (APC) fee of \$5.00 is included per direct labor hour to cover the cost of in-house reproduction services including graphics and photocopying, color printing, long-distance telephone calls including cell phone charges, facsimile, postage, overnight and courier services, and CAD/computer usage.

Other direct costs shall be billed at actual cost plus a service charge, if applicable. Direct charges are all charges, other than time-related charges, incurred directly for the project. (*Contract Employees will be billed per contract*)

Mileage reimbursement rate is .55/per mile.