

ASCG Incorporated of Colorado

SHORT FORM CONTRACT

Date:	<u>August 31, 2005</u>	Project Name:	<u>Water Reclamation Facilities</u>
Client Name:	<u>City of Rapid City</u>	Project No.:	<u></u>
Address:	<u>300 6th, Street</u>	Contact:	<u>Mr. Dan Coon</u>
	<u>Rapid City, SD, 57701</u>	Phone:	<u>605.394.4165</u>
		Fax:	<u>605.394.6636</u>

Services to be Performed:

Assist the City of Rapid City with the two year warranty inspection trip and follow-up to the inspection trip for the Water Reclamation Facilities expansion project. The anticipated services are described in the attached scope of services (Exhibit A) which is hereby made a part of the Contract. ASCG has estimated the time, personnel and expenses required to provided the needed services based upon its experience on performing similar services at other facilities. The actual effort can vary and is dependent upon the General Contractor and its Subs and their cooperativeness and understanding of the system and their contract with the City of Rapid City.

Requested by: Mr. Dan Coon

Schedule: The expected Notice-to-Proceed is in late September (approximately the 20th) and the completion of services will be no later than December 31st, 2005.

Compensation: The City of Rapid City South Dakota (Client) agrees to pay ASCG Incorporated of Colorado (ASCG) for the above Services as follows:

- X An hourly labor rate plus reimbursable expenses per the attached ASCG Standard Fee Schedule (Exhibit B).
Estimated budget price: \$ 9,600

Note: This is a cost reimbursable contract and the Engineer shall inform the City in advance if it is expected that the maximum contract price will be exceeded.

ASCG's Standard Contract Provisions are attached and herein incorporated by reference. By its signature below, Client: 1) acknowledges receipt and approval of such Standard Contract Provisions, including the Limitation of Liability provisions included therein, and 2) authorizes ASCG to proceed with the Services.

ASCG Incorporated of Colorado

The City of Rapid City South Dakota

_____	By: _____
_____	Print _____
_____	Name: _____
_____	Title: <u>Mayor</u>
_____	Date: _____

12596 W. Bayaud Avenue, Suite 200
Lakewood, CO 80228
Phone: 303-458-5550; Fax: 303-480-9766

ASCG Incorporated of Colorado

The City of Rapid City South Dakota

By: William R Kendall
 Print Name: William R. Kendall, P.E.
 Title: Vice-President, Office Manager
 Date: August 8th, 2005

Attested by
 By: _____
 Print Name: James Preston
 Title: Finance Office
 Date: _____

**ASCG Inc
 Standard Contract Provisions**

1. **Period of Service:** ASCG will commence work within ten days of receipt by ASCG of the executed Agreement and will proceed with said work in a diligent manner to completion. ASCG will not be responsible for delays caused by factors beyond ASCG's control and which could not reasonably have been foreseen at the time this Agreement was executed.
2. **Terms of Payment:** Amounts due for Services will be billed monthly based on the actual services completed. CLIENT shall make prompt monthly payments in response to ASCG's monthly invoices. If CLIENT objects to any invoice submitted by ASCG, CLIENT shall so advise ASCG in writing, giving reasons therefore, within fourteen days of the date on said invoice. If CLIENT fails to make any payment due ASCG for services and expenses within thirty days of the date on the invoice therefore, the amounts not paid will be considered past due. ~~A delinquency charge of 1-1/2% per month shall be added to the past due amount,~~ and in addition, ASCG may suspend services under this Agreement, without liability for delay or other damages which may result therefrom, upon delivery of written notice of its intention thereof. CLIENT shall pay all reasonable attorney's fees, court costs and collection fees incurred by ASCG in the collection of any past due invoices.
3. **Payments in Event of Termination:** In the event this Agreement is terminated, ASCG will be compensated for services performed under this Agreement to the date of termination in accordance with the above provisions governing payments to ASCG. If this Agreement is terminated by CLIENT regardless of reason, ASCG will also be compensated for all reasonable costs and expenses incurred to assemble and close project files and records.
4. **Opinions of Cost:** ASCG has no control over the cost of labor, materials, equipment or services furnished by others, or over contractors' methods of determining prices, or other competitive bidding or market conditions. ASCG's opinions of probable Project or construction costs are made on the basis of ASCG's experience and qualifications and represent ASCG's judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ASCG cannot and does not guarantee that proposals, bids or actual Project or construction costs will not vary from opinions of probable costs prepared by ASCG.
5. **Standard of Performance:** ASCG shall perform its services in accordance with generally accepted standards presently maintained by other practicing professionals engaged in the same type of work in the general location of the project. ASCG makes no other warranty, expressed or implied.
6. **Construction and Safety:** ASCG shall not have authority over, or any responsibility or liability for, the means, methods, techniques, sequences or procedures of construction selected by Contractor(s); for safety precautions and programs incident to the work of Contractor(s); or for any failure of Contractor(s) to comply with laws, rules; regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their work.

ASCG Inc

CLIENT:

Initials: WRK Date: 9/1/2005
Aug 2004 Verston

Initial: _____ Date: _____

7. **Reuse of Documents:** All documents, including drawings and specifications, prepared by ASCG pursuant to this Agreement are Instruments of Service and shall remain the property of ASCG. The CLIENT agrees not to reuse or make any modifications to these Instruments of Service without prior written authorization from ASCG. Any reuse will be at CLIENT's sole risk and without liability or legal exposure to ASCG; and CLIENT shall indemnify and hold harmless ASCG to the fullest extent permitted by law from all claims, damages, losses and expenses, including attorneys' fees arising out of or resulting therefrom.
8. **Electronic Media Delivery:** It is recognized that the CLIENT may, from time to time, request the delivery of and receive copies of drawings on computer disks and/or magnetic tapes. The original discs and/or magnetic tapes will be retained by ASCG and the information on this media is and shall remain Instruments of Service and the property of ASCG. The information on the electronic media is considered part of ASCG's Instrument of Service and shall not be used on other projects, for additions to this project, or for completion of this project by another design professional except by agreement in writing and with appropriate compensation to ASCG.

Any such use or reuse by the CLIENT or others, without written verification or CADD adaptation by ASCG for the specific purpose intended will be at the CLIENT's sole risk and without liability or legal exposure to ASCG. Furthermore, the CLIENT shall, to the fullest extent permitted by law, indemnify and hold harmless ASCG from all claims arising out of or resulting therefrom. Due to the potential that the information set forth on the computer discs and/or magnetic tapes can be modified by the CLIENT, unintentionally or otherwise, ASCG reserves the right to remove all reference to its ownership and/or involvement from each electronic display. The CLIENT shall be responsible for determining the compatibility of ASCG's files with the CLIENT's software. ASCG makes no warranty as to the compatibility of its files with the CLIENT's software. Because data stored on electronic media can deteriorate undetected, the CLIENT agrees that ASCG cannot be held liable for the completeness or correctness of the electronic data after an acceptance period of 30 days from the date of delivery of the electronic files.

9. **Differing Site Conditions:** "Differing Site Conditions" are physical, structural, subsurface, soil or other conditions uncovered, revealed or discovered which differ from 1) those presented by CLIENT to ASCG, in any RFP or otherwise, 2) those ordinarily encountered and generally recognized as inherent in work of a similar character, or 3) those apparent based upon a reasonable visual inspection of the project site. If Differing Site Conditions adversely affect ASCG's work hereunder, then 1) ASCG need not continue performance of the work after notifying the CLIENT of such Differing Site Conditions, and 2) if CLIENT wishes ASCG to so continue, CLIENT and ASCG shall agree in writing upon an appropriate new agreement to reflect the cost and schedule impact of such conditions.
10. **Indemnification and Limitation of Liability:** ASCG agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless from damages, liability, losses, or cost (including reasonable attorneys' fees actually incurred) to the extent directly caused by ASCG's negligent acts, errors, or omissions. The Client agrees, to the fullest extent permitted by law, to indemnify and hold ASCG harmless from damages, liability, losses or cost (including attorneys' fees actually incurred) to the extent *directly* caused by the Client's negligent acts, errors or omissions and those of its contractors, subcontractors, or consultants or anyone for whom the Client is legally liable, and arising from the project that is the subject of this Agreement. *Neither party* is obligated nor does either party agree herein to indemnify the *other party* in any manner whatsoever for *such party's* own negligence. In no event shall *either party* be liable for any lost profits or other special, incidental or consequential damages. This provision shall survive the termination or expiration of this Agreement.

11. **Time Bar To Legal Action:** In accordance with CO Rev Stat § 13-80-104, all legal actions by either party against the other arising out of or in any way connected with the services to be performed hereunder shall be barred and under no circumstances shall any such claim be initiated by either party after six (6) years have passed from the date of issuance of the Certificate of Completion, unless ASCG's services shall be terminated earlier, in which case the date of termination of this Agreement shall be used.

ASCG Inc

CLIENT:

Initials: WRG
Aug 2004 Version

Date: 9/1/2005

Initial: _____

Date: _____

12. **Termination:** Either party may terminate this Agreement at any time upon seven days' prior written notice to the other; provided, the provisions of Section 10 (Limitation of Liability) shall survive termination.
13. ~~**Dispute Resolution:** If a dispute arises out of or relates to this Agreement or the breach thereof, the parties agree to engage first in good faith negotiations prior to initiating any further action. If the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by nonbinding mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation, or some other dispute resolution procedure. Each party agrees to bear its own costs of mediation and to share the expense of the mediator. In no event may the demand for negotiation or mediation or any other form of dispute resolution be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations.~~
14. **Consequential Damages.** Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the Client or ASCG, their employees, agents, subconsultants, or subcontractors. Consequential damages include but are not limited to loss of use and loss of profit.
15. **Waiver:** No waiver of a breach of any covenant, term or condition of this Agreement shall be a waiver of any other or subsequent breach of the same or any other covenant, term or condition or a waiver of the covenant, term or condition itself.
16. **Controlling Law, Jurisdiction and Venue:** This Agreement shall be governed by the laws of the State of ~~Colorado~~. Jurisdiction and venue of any dispute hereunder shall be in ~~Denver, Colorado~~
South Dakota Rapid City, SD
17. **General:** This Agreement: (a) is the entire agreement between the parties and supersedes all prior agreements or understandings related to the subject matter whether written or oral, (b) may be modified only in writing signed by both parties, and (c) may be executed by either party by orally confirmed fax transmission to the other party of a counterpart showing the signature of an authorized representative of such party. Neither the rights nor duties of this Agreement may be assigned or delegated by a party without prior written consent of the other party.
18. **Severability:** Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.
19. **Insurance:** During the term of this Agreement, ASCG agrees to provide evidence of insurance coverage as shown on Addendum A, attached hereto.

ASCG Inc

CLIENT:

Initials: WSE
Aug 2004 VersionDate: 9/1/2005

Initial: _____

Date: _____

Addendum A

To Contract Between ASCG Incorporated of Colorado and City of Rapid City South Dakota(Client), dated September , 2005.

Schedule of Insurance

In accordance with the terms of this Agreement, the Design Professional shall attempt to obtain and maintain the insurance policies with coverages and limits as indicated hereon:

- Professional Liability Practice Policy with limits of \$1,000,000 per claim/\$1,000,000 annual aggregate on a claims made basis.
- Workers' Compensation Insurance as required by applicable state statute.
- Automobile Liability Insurance with limits of \$1,000,000 per occurrence, combined single limits. This policy shall be written or endorsed to include the following provisions:
 - The City of Rapid City shall be named as an additional insured
 - Other: None

The above indicated coverages shall be subject to all of the terms, exclusions, and conditions of the policies. Certificates of Insurance shall be provided to The City of Rapid City South Dakota (Client) upon execution of the Agreement and prior to commencement of services by ASCG.

ASCG Inc

CLIENT:

Initials: WRK
Aug 2004 Version

Date: 9/1/2005

Initial: _____

Date: _____

Exhibit A

**Estimated Construction Observation Services
For 2 year Warranty and HVAC Inspection
Rapid City WRP**

No.	Task	Total Estimated Task Cost	Project Engineer (P8)		Sr. Inspector (I5) Dan Petramala		Res. Engineer (P3) Mark Youker		Travel and Expenses			
			Labor Hours	Labor Rate	Labor Hours	Labor Rate	Labor Hours	Labor Rate	Airplane Tickets	Car Rental	Lodging	Pier Diem
1	Plant and Admin. Building Inspection by Mark Youker. Includes 1 -1/2 days (12 hours) on site inspection (while Dan is on Site) 1/2 day (4 hours) Preparation and research of Punchlist items 6 hours of Travel Time to Rapid City Air Travel, 2 days Lodging, 3 day Car Rental (Included with Dan's Car Rental) and Expenses in Rapid City	\$ 2,142.00					22	\$ 76.00	\$ 350.00		\$ 60.00	\$ 60.00
2	Plant, SCADA and HVAC Inspection by Dan Petramala. Includes 4 -1/2 days (36 hours) on site inspection and walkthrough of the site issues with the Contractor, 1/2 day (4 hours) Preparation and research of Punchlist items, SCADA & HVAC Issues 6 hours of Travel Time to Rapid City Travel, Lodging and Expenses in Rapid City	\$ 4,896.00		46	\$ 86.00				\$ 350.00	200	\$ 240.00	\$ 150.00
3	Punchlist Completion On site Inspection by Dan Petramala. Includes 1 days (8 hours) on site inspection, a brief "Findings Report" memo, 6 hours of Travel Time to Rapid City Travel, Lodging and Expenses in Rapid City	\$ 1,634.00		14	\$ 86.00				\$ 350.00	50		\$ 30.00
4	Office time for preparation for inspections and post inspection follow up questions and correspondence.	\$ 928.00	2	\$ 140.00	4	\$ 86.00	4	\$ 76.00				
		\$ 9,600.00	2 Hrs.		64 Hrs.		26 Hrs.		\$ 1,050.00	\$ 250.00	\$ 300.00	\$ 240.00

Estimated Cost for Construction Observation Services \$ 9,600.00
Contingency (0%) \$ -

Total Construction Observation Services Cost Budget \$ 9,600

Cost Estimate Travel and Lodging Cost Note:

Air Travel cost estimates were based on current Air Fares with 1 week notice. Short notice Air Fares would be three times the costs used for preparation of this estimate. Car Rental and Lodging Costs could also be affected by the timing of the inspections and lodging and vehicle availability. Increase and/or decreases in the estimated costs for these expense would be reflected in the actual charges for the tasks.

EXHIBIT B
ASCG Incorporated
Schedule of Hourly Rates

<u>Personnel</u>	Rates effective January 1, 2005 through December 31, 2005	<u>2005 Rate</u>
Principal Engineer		\$140
Senior Engineer		\$122
Senior Project Engineer/Senior Project Manager		\$114
Senior Geologist/Hydro-Geologist		\$114
Project Engineer		\$102
Project Geologist		\$102
Staff Engineer		\$90
Geologist/Hydrologist II		\$90
GIS Professional		\$90
Staff Professional		\$79
Geologist/Hydro-Geologist I		\$79
Design Professional II		\$68
Geologist/Hydrologist Assoc		\$68
Design Professional I		\$60
Senior Resident Engineer		\$85
Resident Engineer		\$76
Resident Engineer Intern		\$67
Senior Resident Field Representative		\$87
Project Field Representative III		\$77
Project Field Representative II		\$68
Project Field Representative I		\$57
Technical, Senior Designer II		\$92
Technical, Senior Designer I		\$81
Technical, Project		\$70
Technical, Staff		\$54
Technical, Design		\$41
Division Administrator		\$48
Word Processor		\$48
Two-Person Survey Crew		\$126

Automobile expenses at \$0.405 per mile.

Rental Vehicle at direct cost plus 10%

Out-of-Town Travel: Per diem at \$30/day for meals, Lodging at direct cost plus 10%

Third party expenses are billed at cost plus 10%.

Copying, telephone, courier, FAX and postage are included in bill rates

Expert Testimony: To be negotiated

Interest of 1.5% per month will be charged on all Invoice amounts 60 days past due from Invoice date.

This Schedule of Rates is considered by ASCG Incorporated to be 'CONFIDENTIAL' information. Release of any information contained herein to third parties is prohibited without express written consent of ASCG Incorporated.