

REQUEST AUTHORIZATION FOR MAYOR AND FINANCE OFFICER TO SIGN PROFESSIONAL SERVICES AGREEMENT September 9, 2008

Project Name & Number: Elk Vale Low Level Reservoir W07-1638

CIP #: 50321

Project Description: Provide Construction Phase Services for construction of the Elk Vale Low Level Water Reservoir and related Signal Hill improvements.

Consultant: Advanced Engineering and Environmental Services, Inc.

Original Contract Amount: \$299,987.00

Original Contract Date: Sept. 8, 2008

Original Completion Date: October 15, 2009

Amendment Number:

Amendment Description:

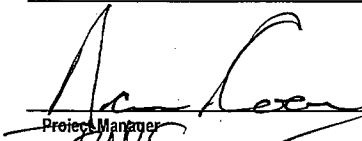
Current Contract Amount: _____
Change Requested: _____
New Contract Amount: _____ \$0.00


Current Completion Date: _____
New Completion Date: _____

Funding Source This Request:

Amount	Dept.	Line Item	Comments
\$299,987.00	934	4223	Water Enterprise Fund
\$299,987.00	Total		

Agreement Review & Approvals




 Project Manager


 Department Director

9-3-08

 Date
 9-3-08

 Date



 Division Manager
 9-3-08

 Date

 City Attorney

 Date

ROUTING INSTRUCTIONS

Route two originals of the Agreement for review and signatures.
 Finance Office - Retain one original
 Project Manager - Retain second original for delivery to Consultant
 cc: Public Works
 Engineering
 Project Manager

FINANCE OFFICE USE ONLY

(Note to Finance: Please write date of Agreement in appropriate space in the Agreement document)

	Date	Initials	Approved
Appropriation			Y N
Cash Flow			Y N

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

**Elk Vale Low Level Water Reservoir
Project No. W07-1638**

THIS IS AN AGREEMENT effective as of September 8, 2008 ("Effective Date") between City of Rapid City, 300 Sixth Street, Rapid City, SD 57701 ("OWNER") and Advanced Engineering and Environmental Services, Inc., 1815 Schafer Street, Suite 301, Bismarck, ND 58501 ("ENGINEER").

OWNER intends to construct a water storage reservoir for the Low Level water service zone in the Elk Vale Road area ("Project") in accordance with the Elk Vale Low Level Reservoir drawings and specifications dated July 2008. OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

A. ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.

C. If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit D.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

B. OWNER shall furnish Owner's Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Appendix 1 to Exhibit B.

ARTICLE 3 - TIMES FOR RENDERING SERVICES

3.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services, rates, and compensation shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

3.02 Suspension

A. If OWNER fails to give prompt authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. If ENGINEER's services, as described in Exhibit A, are delayed or suspended in whole or in part by OWNER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation.

C. If OWNER's services, as described in Exhibit B, are delayed or suspended in whole or in part by ENGINEER, OWNER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by OWNER in connection with, among other things, such delay or suspension and reactivation.

ARTICLE 4 - PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A, Construction, and 4.01.B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.

B. *Payment of Invoices.* Invoices are due and payable within 45 days of receipt. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. In the event of such, partial payment of the undisputed portion shall in no way be considered a waiver of the disputed portion.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. **Not Used.**

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. **Not Used.**

5.02 Designing to Construction Cost Limit

A. **Not Used.**

5.03 Opinions of Total Project Costs

A. **Not Used.**

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

E. OWNER shall be responsible for all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may at its own risk, use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner.

G. **Not Used.**

H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

6.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party. Where South Dakota State law dictates, project decisions will be made by the Rapid City Common Council.

6.03 Design without Construction Phase Services

A. Not Used.

B. Not Used.

6.04 Use of Documents

A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

B. Copies of OWNER-furnished data are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

6.05 Insurance

A. ENGINEER shall maintain insurance coverage for Workers' Compensation, General Liability, and Automobile Liability and will provide certificates of insurance to OWNER upon request.

B. **Not Used.**

C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project

D. **Not Used.**

E. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

F. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles. If so requested by OWNER, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER.

6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By ENGINEER:

1) upon seven days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or

2) upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.

3) ENGINEER shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience,*

a. By OWNER effective upon the receipt of notice by ENGINEER.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

C. In the event the Agreement is terminated for cause or for convenience by either party, ENGINEER shall deliver to OWNER all work products related to the project to date.

6.07 Controlling Law

A. This Agreement is to be governed by the law of the State of South Dakota. Any legal action arising out of or relating to this Agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

6.08 Successors, Assigns, and Beneficiaries

A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

6.09 Dispute Resolution

Not Used.

6.10 Hazardous Environmental Condition

A. OWNER represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

6.11 Allocation of Risks

A. Indemnification

1. **Not Used.**
2. **Not Used.**

3. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.

6.12 Limits of Liability

A. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of ENGINEER and ENGINEER's officers, directors, partners, employees, agents, and ENGINEER's Consultants, and any of them, to OWNER and anyone claiming by, through, or under OWNER for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied, of ENGINEER or ENGINEER's officers, directors, partners, employees, agents, or ENGINEER's Consultants, or any of them (hereafter "OWNER's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to ENGINEER by ENGINEER's insurers in settlement or satisfaction of OWNER's Claims under the terms and conditions of

ENGINEER's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal).

6.13 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.14 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.15 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.16 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.17 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7 – DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2 of this Agreement.

3. *Agreement*--This "Standard Form of Agreement between OWNER and ENGINEER for Professional Services," including those Exhibits listed in Article 8 hereof.

4. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.

7. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order*--A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.

11. *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

12. *Construction Cost*--The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

13. *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times*--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

16. *Contractor*--An individual or entity with whom OWNER enters into a Construction Agreement.

17. *Correction Period*--The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective*--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.

20. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

21. *Effective Date of the Construction Agreement*--The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *Effective Date of the Agreement*--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *ENGINEER's Consultants*--Individuals or entities having a contract with ENGINEER to furnish services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

24. *Field Order*--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

25. *General Conditions*--That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

28. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. *Owner's Construction Representative*--The authorized representative of OWNER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Owner's Construction Representative will be OWNER's employee and under OWNER's supervision. As used herein, the term Owner's Construction Representative includes any assistants agreed to by OWNER and ENGINEER. The duties and responsibilities of the Owner's Construction Representative are as set forth in Exhibit B.

30. *PCB's*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

33. *Record Drawings*--The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.

34. *Reimbursable Expenses*--The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.

35. *Resident Project Representative*--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.

36. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

37. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.

38. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

39. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

40. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

41. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements the General Conditions.

42. *Total Project Costs*--The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement.

43. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

44. *Work Change Directive*--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

45. *Written Amendment*--A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

A. Exhibit A, "ENGINEER's Services," consisting of seven pages.

B. Exhibit B, "OWNER's Responsibilities," consisting of two pages and Appendix 1 to Exhibit B, "OWNER's Project Representative" consisting of four pages.

C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of one page entitled Appendix 1 to Exhibit C, "2008 Hourly Rate and Reimbursable Expense Schedule" consisting of one page, and one page entitled Appendix 2 to Exhibit C, "Subconsultant 2008 Hourly Rate and Reimbursable Expense Schedule" consisting of one page.

D. Exhibit D, "Resident Project Representative" consisting of four pages.

8.02 Total Agreement

A. This Agreement (consisting of pages 1 to 12 inclusive, together with the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

Alan Hanks

By: _____

Title: Mayor

Date Signed: _____

ATTEST: _____

Name: Jim Preston

Title: Finance Officer

Address for giving notices:

City of Rapid City

300 Sixth Street

Rapid City, SD 57701

Designated Representative (paragraph 6.02.A):

Klare Schroeder, PE

Title: Project Manager

Phone Number: (605) 394-4154

Facsimile Number: (605) 394-6636

E-Mail Address: klare.schroeder@rcgov.org

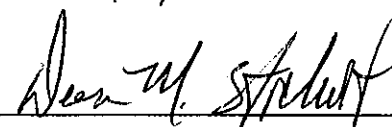
ENGINEER:

Brett M. Jochim, PE

By: 

Title: Chief Operating Officer

Date Signed: 9/2/08

ATTEST: 

Name: Deon Stockert, PE

Title: Drinking Water Manager

Address for giving notices:

Advanced Engineering and Environmental Services, Inc.

1815 Schafer Street, Suite 301

Bismarck, ND 58501

Designated Representative (paragraph 6.02.A):

Laith Hintz, PE

Title: Project Manager

Phone Number: (701) 221-0530

Facsimile Number: (701) 221-0531

E-Mail Address: laith.hintz@ae2s.com

This is **EXHIBIT A**, consisting of seven pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated September 8, 2008.

ENGINEER's Services

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER shall provide Basic and Additional Services as set forth below.

PART 1 -- BASIC SERVICES

A1.01 *Study and Report Phase* – **Not Used.**

A1.02 *Preliminary Design Phase* – **Not Used.**

A1.03 *Final Design Phase* – **Not Used.**

A1.04 *Bidding or Negotiating Phase* – **Not Used.**

A1.05 *Construction Phase*

A. Upon authorization from OWNER, the ENGINEER shall:

1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.

2. *Resident Project Representative (RPR).* Provide the services of an RPR at the Site to assist the ENGINEER and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.

3. Not Used.

4. *Pre-Construction Conference.* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

5. *Baselines and Benchmarks.* As appropriate, Engineer will provide horizontal and vertical control including establishing baselines, control points and benchmarks for locating the Work which in ENGINEER's judgment are adequate to enable Contractor's Surveyor to furnish and place all construction staking necessary to allow the Contractor to construct the project. ENGINEER shall provide OWNER with a copy of all survey information provided to the Contractor.

6. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's work while it is in progress:

a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by ENGINEER, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned

to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, ENGINEER will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.

b. The purpose of ENGINEER's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

c. ENGINEER shall provide up to six (6) visits to the Site at the following meetings. Each visit by ENGINEER shall be limited to a maximum 8-hour day on-Site. Trip descriptions include general schedule and anticipated construction activities.

- 1) Preconstruction Meeting, September 2008.
- 2) Pipeline Meeting, November 2008.
- 3) Signal Hill Substantial Completion Meeting, April 2009.
 - i. Trip shall include ENGINEER's instrumentation and control technician and ENGINEER's electrical subconsultant.
 - ii. ENGINEER's instrumentation and control technician attendance shall be for limited purpose of coordinating with Contractor's HMS manufacturer and integrator.
- 4) Elk Vale Reservoir Wall Construction and Tensioning Meeting, June 2009.
- 5) Substantial Completion Trip, September 2009.
 - i. Trip shall include ENGINEER's instrumentation and control technician and ENGINEER's electrical subconsultant.
 - ii. Trip shall include startup of various systems, HMS manufacturer field service, etc. ENGINEER'S instrumentation and control technician attendance shall be for limited purpose of coordinating with Contractor's HMS manufacturer and integrator.
 - iii. Together with OWNER, visit the Project to observe any apparent defects in the Work, assist OWNER in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
- 6) Final Completion Trip, October 2009.

d. Observation of Construction shall consist of observation by OWNER furnished OPR and ENGINEER furnished RPR which shall act as ENGINEER's agents on-Site and coordinate directly with ENGINEER.

1) OPR shall be responsible for construction phase activities associated with site work consisting of grading, pipe installation, road improvements, fencing, and landscaping as further outlined in Appendix 1 to Exhibit B and accounts for approximately 60 percent of total on-Site construction observation. .

2) RPR shall be responsible for construction phase activities associated with construction of the reservoir, vaults, structural, architectural, mechanical, electrical, and control elements as further outlined in Exhibit D and accounts for approximately 40 percent of total on-Site construction observation. .

7. *Defective Work.* Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

8. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents. ENGINEER shall provide Contractor with ENGINEER's standard form for use in submitting Requests for Information and ENGINEER shall keep a record of submittals.

9. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required. Anticipate maximum of three change orders for the Project. ENGINEER shall provide Contractor with ENGINEER's standard form for use in submitting Requests for Proposal (Potential Change Orders) and ENGINEER shall keep a record of submittals.

- a. Change Order No. 1: To include coordination with Contractor on potential project cost reduction items.
- b. Change Order No. 2: To be determined.
- c. Change Order No. 3: To include final balancing of Project quantities.

10. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.

11. *Substitutes and "or-equal."* Substitute or "or-equal" materials and equipment not identified in Contract Documents shall not be allowed.

12. *Inspections and Tests.* Limited to receiving and review of all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

13. *Disagreements between OWNER and Contractor.* Render formal written decisions on all claims of OWNER and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

14. *Applications for Payment.* ENGINEER to perform limited review of applications for payment for general conformance with Contract Documents and based on ENGINEER's understanding of construction progress to date. OPR responsibilities include review and coordination of applications for payment with Contractor prior to submitting to ENGINEER. Based on ENGINEER's observations as an experienced and qualified design professional and on review of OPR approved Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph A1.05.A.6.a are expressly subject to the limitations set forth in paragraph A1.05.A.6.b and other express or general limitations in this Agreement and elsewhere.

b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

15. *Contractor's Completion Documents.*

a. Receive and review maintenance and operating instructions, schedules, and guarantees. ENGINEER's review of maintenance and operating instructions shall not be exhaustive and shall be limited to verifying all relevant sections are included. ENGINEER does not take responsibility for contents of operation and maintenance manuals beyond checking for relevant sections to be included.

b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A1.05.A.10, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENGINEER's review will be limited as provided in paragraph A1.05.A.10.

c. ENGINEER shall transmit these documents to OWNER.

16. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of OWNER, ENGINEER considers the Work Substantially Complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor. Certificate of Substantial Completion shall be in ENGINEER's standard format.

17. *Additional Tasks.* Perform or provide the following additional Construction Phase tasks or deliverables:

a. Assist OWNER with conformance of Contract Documents.

- b. Provide limited coordination to ensure conformance with the Contract Documents for the following Contractor supplied documents:
 - i. Erosion and Sediment Control Plan.
 - ii. West River Electric Service Agreement.
- c. Pipe School Coordination: ENGINEER shall be responsible for coordination and review of Contractor supplied pipe school agenda. ENGINEER may, or may not, attend pipe school.
- d. City of Rapid City Growth Management:
 - i. *Elk Vale Landscape Vegetative Screen*. OWNER shall provide landscape vegetative design for Elk Vale site and coordinate review and approval with Growth Management Department. ENGINEER's assistance shall be limited to providing preliminary vegetative screen irrigation system design for review by OWNER. Any comments will be incorporated and final irrigation system design submitted to OWNER for their use.
- e. Progress Reports: ENGINEER shall provide basic monthly written progress reports to the OWNER with maximum of ten (10) reports provided. Reports shall include general description of progress of construction (anticipate 1 to 2 pages for each report).
- f. Testing Services: ENGINEER shall provide geotechnical engineering services for testing of site soils limited to engineered fill under all structures, structural backfill, and on-Site reservoir foundation assistance and provide recommendations as to acceptability.
- g. ENGINEER's RPR shall conduct progress meetings every two weeks and provide meeting minutes.
- h. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, RPR, and OPR. Record Drawings shall consist of one (1) 22"x34" color print copy, three (3) half size color print copies, and electronic drawing files compatible with OWNER's current version of AutoCAD software.

18. *Final Notice of Acceptability of the Work*. Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice, in ENGINEER's standard format, that the Work is acceptable (subject to the provisions of paragraph A1.05.A.14.b) to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

B. *Duration of Construction Phase*. The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractors.

C. *Limitation of Responsibilities*. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.06 *Post-Construction Phase – Not Used*.

PART 2 -- ADDITIONAL SERVICES

A2.01 *Additional Services Requiring OWNER's Authorization*

A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, tax increment finance districts, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

3. Services resulting from significant changes in the scope, inspection percentages, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

4. Services resulting from OWNER's request to evaluate additional Study and Report Phase alternative solutions.

5. Services required as a result of OWNER's providing incomplete or incorrect Project information with respect to Exhibit B.

6. Providing renderings or physical models for OWNER's use.

7. Undertaking additional investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER beyond those identified.

8. Furnishing services of ENGINEER's Consultants for other than Basic Services.

9. Services attributable to more prime construction contracts than specified in paragraph A1.03.C.

10. Services during out-of-town travel required of ENGINEER other than for six (6) visits to the Site or OWNER's office beyond those identified in Exhibit A.

11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes beyond those identified in Exhibit A.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.

13. Not Used.

14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.

15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A1.05.A.5, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.

17. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.

18. Not Used.

19. Not Used.

20. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.

21. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 6.01.G of the Agreement.

22. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

23. Structural design for platform to access existing Signal Hill 5MG vault.

24. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.

This is **EXHIBIT B**, consisting of two pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated September 8, 2008.

OWNER's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:

A. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.

B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following ENGINEER's assessment of initially-available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services.

D. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.

E. Authorize ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Provide, on its own behalf, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
2. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests.
3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.
4. Placement and payment for advertisement for Bids in appropriate publications.

J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

K. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

L. If OWNER designates a construction manager, Owner's Project Representative, or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.

1. OWNER shall provide Owner's Project Representative that will be responsible for observation of construction phase activities as set forth in Appendix 1 to Exhibit B.

M. Not Used.

N. Attend the pre-construction conference, construction progress, and other Project related meetings, and Substantial Completion and final payment inspections.

O. Provide the services of an independent testing laboratory, as Owner deems necessary to perform additional inspections, tests, and approvals of Samples, materials, and equipment, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof.

P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER).

Q. Perform or provide the following additional services:

1. *Coordination with City of Rapid City Growth Management Department.* OWNER shall be responsible for coordination with the City of Rapid City Growth Management Department including follow-up required for 11-6-19 SDCL review and fence height exception comments. This includes the following items:

a. *Elk Vale Landscaping Vegetation.* OWNER shall provide a landscape architect to design a vegetative screening for the Elk Vale site and coordinate review and approval with Growth Management Department. ENGINEER assistance shall be limited to providing preliminary irrigation system design for review by OWNER. Any comments will be incorporated and final irrigation system design submitted to OWNER and Contractor for Change Order and execution.

b. *Signal Hill Right-of-Way.* OWNER shall coordinate vacation of a portion of the South Street right-of-way and the Second Street right-of-way as required for Signal Hill improvements. This includes property search, surveying, and obtaining adjacent landowner signatures as required for Vacation of Right-of-Way petition.

c. *Signal Hill Parking Plan.* OWNER shall coordinate Signal Hill parking comments and follow-up with Growth Management as required for Signal Hill improvements.

This is **Appendix 1 to EXHIBIT B**, consisting of four pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated September 8, 2008.

Duties, Responsibilities, and Limitations of Authority of OWNER's Project Representative

Paragraph 2.01B of the Agreement is amended and supplemented to include the following agreement of the parties:

B6.02 *Owner's Project Representative*

A. OWNER shall furnish an Owner's Project Representative ("OPR"), assistants, and other field staff to assist ENGINEER in observing progress and quality of the Work. The OPR, assistants, and other field staff under this Appendix 1 to Exhibit B may provide full time representation or may provide representation to a lesser degree. OPR and RPR shall share observation responsibilities based on the following split:

1. OWNER shall furnish OPR with responsibilities for all Work shown on the following Elk Vale Low Level Reservoir drawings and accounts for approximately 60 percent of total on-Site construction observation. This work generally consists of all site work, grading, landscaping, fence improvements, road improvements, and pipe installation.
 - a. General Drawings G1 and G2.
 - b. Civil Drawings C1 – C24.
 - c. Landscaping Plan Drawing L1.
2. RPR responsibilities, as further defined in Exhibit D, shall be for all Work shown on the following Elk Vale Low Level Reservoir drawings and accounts for approximately 40 percent of total on-Site construction observation. This work generally consists of reservoir and all vault construction.
 - a. Architectural Drawings A1.1, A4.1, A5.1, and A8.1.
 - b. Structural Drawings S1.1, S1.2, S1.3, S2.1, S3.1, S3.2, and S4.1.
 - c. Process Drawings P1 – P9.
 - d. Mechanical Drawings M1.0 and M2.0.
 - e. Electrical Drawings E0.1, E1.0, E1.1, E1.2, E2.0, and E2.1.
 - f. Instrumentation and Control Drawings I1 – I26.

B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the OPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER's specific limitations set forth in section A.1.05 of Exhibit A of the Agreement are applicable.

C. The duties and responsibilities of the OPR are as outlined in paragraph B6.02.A.1 and described as follows:

1. *General:* OPR shall confer with ENGINEER regarding OPR's actions. OPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with ENGINEER and Contractor. OPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. OPR shall communicate with ENGINEER and RPR and upload daily log activities to FTP server.
2. *Schedules:* Review the schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, pipe school, and other project-related meetings.

4. *Liaison:*
 - a. Serve as OWNER's liaison with ENGINEER and Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents.
 - b. Assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-Site operations.
 - c. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
 - d. Coordinate observations with RPR and ENGINEER in a timely manner.
 - e. Submit digital photo files to ENGINEER via email or FTP server to facilitate conflict resolution and construction progress.
5. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
6. *Shop Drawings and Samples:*
 - a. Not Used.
 - b. Not Used.
 - c. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which OPR believes that the submittal has not been approved by ENGINEER.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report OPR's recommendations to ENGINEER.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist ENGINEER and OWNER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER and OWNER whenever OPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that OPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. *Inspections, Tests, and System Startups:*
 - a. Consult with ENGINEER in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Not Used.
 - c. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and pipeline systems startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.

10. *Records:*

- a. Maintain orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER. Daily report, diary, or log book shall be scanned and uploaded to the ENGINEER furnished FTP site in a timely manner.
- c. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish copy of all OPR Project documentation to ENGINEER.

11. *Reports:*

- a. Furnish to ENGINEER daily logs and periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule.
- b. Assist ENGINEER with proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to ENGINEER and OWNER copies of all inspection, test, and system startup reports.
- d. Report immediately to ENGINEER the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.

12. *Payment Requests:* OPR to review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to RPR, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work. RPR will review for general conformance and, if agrees, forward to RPR and ENGINEER for final approval and recommendation for payment. OPR responsibilities include review and coordination of applications for payment with Contractor prior to submitting to ENGINEER and include:

- a. Determine the amounts that OPR recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute OPR's representation to ENGINEER, based on such observations and review, that, to the best of OPR's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is OPR's responsibility to observe Contractor's work. In the case of unit price work, OPR's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents).

13. Not Used.

14. *Completion:*

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of ENGINEER, RPR, OWNER, and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

This is **EXHIBIT C**, consisting of one page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated September 8, 2008.

Payments to ENGINEER for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 -- PAYMENTS TO THE ENGINEER

C4.01 *Hourly to a Maximum Method*

A. OWNER shall pay ENGINEER for Basic Services as set forth in Exhibit A as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.

2. ENGINEER's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendix 1.

3. The total compensation maximum, including all Reimbursable Expenses, for services under Paragraph C4.01 is \$299,987.00.

4. Not Used.

5. The total estimated compensation for ENGINEER's services included in the breakdown by phases as noted in paragraph 4.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and ENGINEER's Consultant's charges.

6. The amounts billed for ENGINEER's services under paragraph C4.01 will be based on the cumulative hours charged to the Project during the billing period by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and ENGINEER's Consultant's charges.

7. Not Used.

8. The Standard Hourly Rates Method of Payment is conditioned on Contract Times to complete the Work not exceeding the final completion date of October 15, 2009. If the Contract Time to complete the Work is extended beyond this period and this extension results in additional cost to the ENGINEER beyond the ENGINEER's control, the total compensation to ENGINEER may be appropriately adjusted.

C4.02 Not Used.

C4.03 *For Additional Services Requiring OWNER's Authorization in Advance*

A. OWNER shall pay ENGINEER for services and reimbursable expenses for Additional Services set forth in Article A2.01 per the Hourly Rate and Reimbursable Expense Schedule included in Appendix 1 of Exhibit C.

C4.04 Not Used.

C4.05 Not Used.

C4.06 *For ENGINEER's Consultant's Charges*

A. Whenever compensation to ENGINEER herein is stated to include charges of ENGINEER's Consultants, those charges shall be the amounts billed by ENGINEER's Consultants to ENGINEER times a Factor of 1.15.

This is **Appendix 1 to EXHIBIT C**, consisting of one page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated September 8, 2008.

2008 Hourly Rate and Reimbursable Expense Schedule

Labor Rates		Administrative I	\$42.00
Engineer I	\$85.00	Administrative II	\$52.00
Engineer II	\$95.00	Administrative III	\$63.00
Engineer III	\$110.00	Administrative IV	\$73.00
Engineer IV	\$125.00	Administrative V	\$81.00
Engineer V	\$135.00		
Engineer VI	\$145.00	Reimbursable Expense Rates	
Engineer VII	\$157.00	Transportation (4x4)	\$0.55/mile
		Transportation (Auto)	\$0.55/mile
Project Manager	\$135.00	Survey Vehicle	\$0.65/mile
Technical Expert I	\$165.00	Photocopies	\$0.10/copy
Technical Expert II	\$180.00	Plots – Color Bond	\$1.25/s.f.
Technical Expert III	Negotiable	Plots – Monochrome Bond/Vellum	\$0.75/s.f.
		Plots – Film/Photo High Gloss	\$2.00/s.f.
I&C Technician I	\$80.00	Digital Imaging	\$10.00/day
I&C Technician II	\$90.00	Computer/CADD	\$10.00/hour
I&C Technician III	\$100.00	Laser Printouts	\$0.20/page
I&C Technician IV	\$110.00	Color Laser Printouts/Copies	\$0.95/page
I&C Technician V	\$122.00	Fax – Receiving	\$1.00/page
I&C Technician VI	\$132.00	Fax – Sending	\$1.00/page
		Projector	\$25.00/hour
Land Surveyor I	\$72.00	Total Station	\$10.00/hour
Land Surveyor II	\$82.00	Total Station – Robotic	\$35.00/hour
Land Surveyor III	\$94.00	Pro-XR GPS	\$15.00/hour
Land Surveyor IV	\$104.00	Fast Static/RTK GPS	\$50.00/hour
Land Surveyor V	\$116.00	All Terrain Vehicle/Boat	\$100.00/day
Land Surveyor VI	\$135.00	Hydrant Pressure Recorders	\$10.00/day
		Telemetry Radio	\$50.00/site
Engineering Technician I	\$46.00	Pressure Recorder	\$5.00/day
Engineering Technician II	\$58.00	Outside Services*	cost *1.15
Engineering Technician III	\$70.00	Out of Pocket Expenses**	cost*1.15
Engineering Technician IV	\$82.00	Rental Car	cost*1.20
Engineering Technician V	\$92.00		
Engineering Technician VI	\$106.00		
Engineering Technician VII	\$126.00		
Webmaster	\$85.00		
IT System Administrator	\$115.00		
CPA	\$120.00		
Financial Analyst	\$120.00		
Senior Consultant	\$135.00		

* Includes laboratory testing, architectural and engineering consultants, surveying, etc.

** Includes toll telephone, shipping, postage, subsistence, technical literature, equipment rental, etc.

This is Appendix 2 to EXHIBIT C, consisting of one page, referred to in and part of the Agreement between OWNER and ENGINEER for Professional Services dated September 8, 2008.

Subconsultant 2008 Hourly Rate and Reimbursable Expense Schedule

Reimbursable Expense Rates

Transportation \$0.60/mile Outside Services* cost * 1.15
 Survey Vehicle \$0.65/mile Out of Pocket Expenses** cost * 1.15
 Photocopies \$0.10/copy Rental Car cost * 1.20

* Includes laboratory testing, architectural and engineering consultants, surveying, etc.

** Includes toll telephone, shipping, postage, subsistence, technical literature, equipment rental, etc.

Standard Hourly Rates Schedule

Standard Hourly Rates will be held constant for the duration of the project scope. Hourly rates for services in effect on the date of the Agreement are:

Position	Hourly Rate
Principal Engineer	\$ 176.75
Engineer III	\$ 139.50
Engineer II	\$ 103.75
Engineer I	\$ 84.25
Eng Tech II	\$ 91.75
Eng Tech I	\$ 75.75
CADD Tech II	\$ 81.50
CADD Tech I	\$ 64.50
Planner II	\$ 118.25
Planner I	\$ 79.00
GIS Analyst II	\$ 85.75
GIS Analyst I	\$ 68.00
Environmental Planner III	\$ 109.50
Environmental Planner II	\$ 94.25
Environmental Planner I	\$ 77.25
Surveyor III	\$ 125.75
Surveyor II	\$ 80.00
Surveyor I	\$ 60.25
Administrative Assistant II	\$ 63.00
Administrative Assistant I	\$ 51.00

This is **EXHIBIT D**, consisting of four pages, referred to in and part of the Agreement between **OWNER** and **ENGINEER** for Professional Services dated September 8, 2008.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Paragraph 1.01C of the Agreement is amended and supplemented to include the following agreement of the parties:

D6.02 *Resident Project Representative*

A. ENGINEER shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist ENGINEER in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.

1. RPR responsibilities, as further defined in Exhibit D, shall be for all Work shown on the following Elk Vale Low Level Reservoir drawings and accounts for approximately 40 percent of total on-Site construction observation. . This work generally consists of reservoir and vault construction.

- a. Architectural Drawings A1.1, A4.1, A5.1, and A8.1.
- b. Structural Drawings S1.1, S1.2, S1.3, S2.1, S3.1, S3.2, and S4.1.
- c. Process Drawings P1 – P9.
- d. Mechanical Drawings M1.0 and M2.0.
- e. Electrical Drawings E0.1, E1.0, E1.1, E1.2, E2.0, and E2.1.
- f. Instrumentation and Control Drawings I1 – I26.

2. OWNER shall furnish OPR with responsibilities shall be for all Work shown on the following Elk Vale Low Level Reservoir drawings and accounts for approximately 60 percent of total on-Site construction observation. This work generally consists of all site work, grading, landscaping, fence improvements, road improvements, and pipe installation.

- a. General Drawings G1 and G2.
- b. Civil Drawings C1 – C24.
- c. Landscaping Plan Drawing L1.

B. Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor’s work in progress, supervise, direct, or have control over the Contractor’s Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility of construction for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in section A.1.05 of Exhibit A of the Agreement are applicable.

C. The duties and responsibilities of the RPR are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents, and are further limited and described as follows:

- 1. *General:* RPR is ENGINEER’s agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR’s dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.
- 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof. Meeting minutes will be in ENGINEER's standard format.
4. *Liaison:*
 - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents.
 - b. Assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-Site operations.
 - c. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify ENGINEER of availability of Samples for examination.
 - c. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENGINEER.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. *Inspections, Tests, and System Startups:*
 - a. Consult with ENGINEER in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems startups.

- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.
10. *Records:*
- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.
 - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
 - c. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
 - d. Maintain records for use in preparing Project documentation.
 - e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENGINEER.
11. *Reports:*
- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Furnish to ENGINEER and OWNER copies of all inspection, test, and system startup reports.
 - d. Report immediately to ENGINEER the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.
12. *Payment Requests:* OWNER to review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to RPR, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work. RPR will review for general conformance and, if agrees, forward to ENGINEER for final approval and recommendation for payment.
13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.
14. *Completion:*
- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.

- b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of OWNER or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize OWNER to occupy the Project in whole or in part.