

REQUEST AUTHORIZATION FOR MAYOR AND FINANCE OFFICER TO SIGN PROFESSIONAL SERVICES AGREEMENT OR AMENDMENT

Date: November 19, 2008

PW120908-01

Project Name & Number: West Boulevard Area Sewer Reconstruction Project, Phase 2 - 11th Street Alley Sewer #~~CS08-1728~~ #5509-1772 **CIP #:50422**

Project Description: Construction of new sanitary sewer main to replace existing old, undersized, and structurally deficient sanitary sewer mains generally located in the alley between 11th Street and West Boulevard from Kansas City Street to St. Charles Street. The construction will include replacement of mains and manholes to current Standard Specifications, reconnection of service lines, and repair or replacement of surfacing (pavement, sidewalk, curb & gutter) as necessary.

Consultant: Ferber Engineering Company, Inc.

Original Contract Amount: \$38,115.00 **Original Contract Date:** Nov. 19, 2008 **Original Completion Date:** June 1, 2009

Amendment Number:

Amendment Description:

Current Contract Amount: _____ **Current Completion Date:** _____

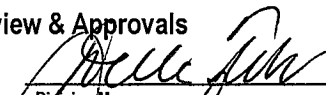
Change Requested: _____

New Contract Amount: _____ **\$0.00** **New Completion Date:** _____

Funding Source This Request:

Amount	Dept.	Line Item	Fund	Comments
\$38,115.00	833	4223	604	Wastewater Replacement/Impr. - Prof. Services (Engineering)
\$38,115.00	Total			

Agreement Review & Approvals

 Project Manager  Department Director	Nov 20 2008 Date	 Division Manager  City Attorney	12-3-08 Date 12-3-08 Date
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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 FOR PROFESSIONAL SERVICES

This Agreement is made and entered into this 19th day of November, 2008, by and between the City of Rapid City, hereinafter called the **OWNER**, and Ferber Engineering Company, Inc., a South Dakota Corporation, hereinafter called the **CONSULTANT**.

WHEREAS, the **OWNER** has determined the need to procure professional engineering services for the professional engineering and geotechnical investigation services for design, and bidding services for the **WEST BOULEVARD AREA SEWER RECONSTRUCTION PHASE 2 - 11TH STREET ALLEY SEWER RECONSTRUCTION - PROJECT** ~~SS08-1728~~ ^{SS09-1772}, **CIP#50422**, as identified and referred to herein as the **PROJECT**; and,

WHEREAS, the **CONSULTANT** has satisfied the **OWNER** that **CONSULTANT** is capable of providing those services;

NOW, THEREFORE, the **OWNER** and **CONSULTANT** in consideration of the payments and agreements herein contained, do hereby agree as follows:

PROJECT DESCRIPTION

The 11th Street Alley Sewer Reconstruction Project (~~SS08-1728~~ ^{SS09-1772}) is generally located in the alley between West Boulevard and 11th Street beginning at South Street and ending at St Charles Street. This scope of work was developed based on the recommendations of Ferber Engineering Company, Inc., in their West Boulevard Sewer Reconstruction Sanitary Sewer Evaluation (DRAFT) submitted in September 2008.

This **PROJECT** includes replacement of old, undersized and structurally deficient sanitary sewer mains. It is anticipated that the improvements will include the reconstructing the sanitary sewer mains and manholes to meet the requirements of the Standard Specifications. All sanitary sewer service lines shall be reconnected to the new main replacing only the amount of sewer service pipe necessary to make the reconnection. All pavement, curb and gutter, sidewalk, etc. disturbed by the construction shall be replaced or repaired as necessary.

ARTICLE I SCOPE OF SERVICES

TASK 1 - PRELIMINARY DESIGN SERVICES:

This task consists of all services necessary to take the project from beginning through the Preliminary Design submittal stage, and will include the following itemized services.

11th STREET ALLEY SANITARY SEWER RECONSTRUCTION PROJECT

City Project No. SS08-1728/ CIP No. 50422

- 1.1 Kick-off Conference: The consultant shall meet with City staff to detail project concept and scope. The consultant shall prepare an agenda, take minutes, and distribute minutes.
- 1.2 Prepare Project Technical Memorandum (PTM): The consultant shall establish and indicate project specific design criteria and standards within the PTM. Design issues specific to the 11th Street Alley Sanitary Sewer Reconstruction will be provided in the PTM. The project's geotechnical report shall be submitted with the PTM. Submit three (3) copies of the PTM and preliminary plans and specifications to City of Rapid City's project manager for review and comment.
 - 1.2.1 The consultant shall update the West Boulevard Sewer Reconstruction Sanitary Sewer Evaluation report (completed under separate contract). Appropriate revisions shall be made for recommended preliminary horizontal and vertical alignment for utilities and other public improvements. Establish pipe sizes and complete water quality assessment, etc. Provide justification for the facility and analysis of alternatives.
- 1.3 Perform site surveys sufficient for design plan preparation. The route and topography survey shall be tied to at least two City of Rapid City Monument Control system monuments utilizing State Plane coordinates.
- 1.4 Identify right-of-way (ROW) and easement acquisition needs. Include size and extent of such ROW and easements and contact information of property owners.
- 1.5 Prepare preliminary opinion of probable construction costs for the project.
- 1.6 Recommend location and extent of geotechnical services investigations necessary to complete design. Consultant will subcontract with American Engineering Testing, Inc. (AET) to conduct a Geotechnical Investigation for the project. AET will provide a soils report compiling the field collected information and the laboratory analyses.
- 1.7 Prepare preliminary plan and profile sheets including locations of existing and new utilities and street alignment. Show existing utilities locations with probable depths.
- 1.8 Attend submittal review meeting with City staff, if necessary.
- 1.9 Attend Public Works and Council meetings as necessary.
- 1.10 Prepare and distribute a landowner mailing to inform affected property owners of the project.
- 1.11 Meet with individual property owners regarding ROW and easement needs and regarding specific project issues and components if necessary.
- 1.12 Meet with individual or groups of property owners that have been identified within the PROJECT area and as shown in the *West Boulevard Sewer Reconstruction Sanitary Sewer Evaluation (DRAFT – September 2008)* that either have long or combined sanitary sewer services, which are by current City ordinance noncompliant, herein referred to as "potential assessed projects".
 - 1.12.1 The conceptual plans submitted with the report provide reasonable solutions to the noncompliant sanitary sewer services.
 - 1.12.2 The meetings will present the scope and costs associated with the "potential assessed projects", to be constructed under separate bid schedule within the PROJECT, which would result in sanitary service being provided to the properties in a manner compliant with City specifications.

11th STREET ALLEY SANITARY SEWER RECONSTRUCTION PROJECT
City Project No. SS08-1728/ CIP No. 50422

- 1.12.3 Meeting(s) with and notifications sent to the affected landowners of the “potential assessed projects” will be in conformance with the City standards of Informal Hearing for an Assessed Project under Rapid City Public Works Department procedures.
- 1.12.4 If a sufficient number of the property owners that would benefit from “potential assessed projects” in each anticipated area, as described in Section 1.12.1 of this **Agreement**, desire to proceed with an assessed project, **CONSULTANT** will assist the Public Works Department in preparing a request to the Rapid City Common Council to approve a Resolution of Necessity for an assessed project to construct additional improvements.
 - 1.12.4.1 If there is insufficient interest from the affected property owners or if the Rapid City Common Council declines to authorize a Resolution of Necessity, no further services with regard to infrastructure extensions for the “potential assessed projects” or noncompliant sanitary sewer services will be completed under this **PROJECT**.
 - 1.12.4.2 If the Rapid City Common Council authorizes the Resolution of Necessity, **CONSULTANT** services for the design, preparation of contract documents, bidding and/or construction related services for the “potential assessed projects” may be provided under an Amendment to this **Agreement**, to be negotiated in accordance with ARTICLE 5 of this **Agreement**, but *are not* included in the scope of this original Agreement.

TASK 2 - FINAL DESIGN SERVICES:

This task consists of all services necessary to take project from Task 1 Preliminary Design Services through the Final Design Services, and may include the following itemized services.

- 2.1 Address City comments from the Task 1 City review(s) and finalize Project Design Report,
- 2.2 Assist the City with easement(s) acquisition, and obtain property owner contact information, prepare easement and ROW exhibits as necessary, conduct property owner meetings for easement and ROW acquisition, and document acquisition meetings.
- 2.3 Determine removal limits with approval of City of Rapid City representative.
- 2.4 Coordinate with the geotechnical engineer to complete these services, and provide a geotechnical report to be included with the PTM and project plans or specifications,
- 2.5 Incorporate ADA compliance items when construction disturbs a component that needs to be upgraded to meet ADA requirements,
- 2.6 Incorporate Erosion and Sediment Control items,
- 2.7 Provide three (3) copies of the finalized PTM,
- 2.8 Provide three (3) copies of the Final Design Services submittal. The submittal shall consist of complete plans, specifications, contract documents, and opinion of probable

11th STREET ALLEY SANITARY SEWER RECONSTRUCTION PROJECT
City Project No. SS08-1728/ CIP No. 50422

construction cost to the City of Rapid City's project manager for review. The Final Design Services submittal will be made to the City when the consultant believes the plans, specifications, contract documents, and opinion of probable construction cost are 100% complete.

- 2.9 Provide and make submittals for review by the Rapid City Planning Commission per SDCL 11-6-19, if required.
- 2.10 Provide complete plans and specifications for a unit price construction contract. Plan sheets shall be prepared utilizing the latest City of Rapid City Drafting Standards.
- 2.11 Plans documents shall adhere to current City of Rapid City guidelines.
- 2.12 Staking information shall include either of the following formats:
 - On the Plans
 - Station offsets for all items of work requiring field staking.
 - In tabular form on a plan sheet (schedule)
 - Coordinates and description of inter-visible control points.
 - Coordinates of all items of work requiring field staking.
 - Benchmark information shall be provided on each sheet.
- 2.13 Provide project layout to include lot lines (front and side) and addresses of all properties (adjacent to construction, or alternatively, in service area).
- 2.14 Provide detailed traffic control plan showing all devices required for a MUTCD compliant plan. A separate plan may be required for each phase or location of construction.
- 2.15 Coordinate directly with utility companies' engineering divisions to ensure that all existing utilities are completely and accurately identified and located in the field; that pertinent information regarding depth, material, size, etc. are noted on the plans; and that conflicts requiring relocation of utilities or special construction techniques are fully specified in the contract documents. Preliminary plans shall be provided to the pertinent utilities for comment at the time they are complete.
- 2.16 If desiring exceptions from City requirements or specifications, it is the Consultant's responsibility to request and secure exceptions. Failure by the City to comment on a nonconforming item during a review does not constitute the granting of an exception.
- 2.17 Provide detailed specifications supplementing the City of Rapid City Standard Specifications, as necessary. Typically project drawing specific issues should be indicated as a General Note on the drawings. Material types and material specific items would be included as a detailed specification.
- 2.18 Prepare applicable permits with exhibits required for the City.
- 2.19 Identify permits that will be required for the Contractor.
- 2.20 Prepare final "Engineer's Estimate" of probable construction cost for the project.
- 2.21 Deliver the following:
 - Provide five (5) copies of bid documents including complete plans, specifications, contract documents, and Engineer's Estimate of probable construction cost to the City of Rapid City's project manager for City distribution.
 - Provide complete plans on CD compatible with AutoCAD Release 2006 format.

11th STREET ALLEY SANITARY SEWER RECONSTRUCTION PROJECT
City Project No. SS08-1728/ CIP No. 50422

- Provide all topographic, control, and design points in the .dwg file and in tabular format, both on CD and on hard copy printout.
 - Provide complete specifications and contract documents on CD in Microsoft Word XP or previous versions.
 - Provide a unit price cost estimate on CD in Microsoft Excel XP or previous version on the City of Rapid City "Engineer's Estimate" form.
 - Provide Engineer's Estimate of probable construction costs as a component of this submittal.
- 2.22 All submittals (drawings and specifications) believed by the Engineer of Record to be a final, shall contain a Certification Statement of Conformance with City Standards which shall read, "I (insert Engineer of Record's name) Certify that I have read and understand the provisions contained in the City of Rapid City Standard Specifications for Public Works Construction, current edition and the City of Rapid City's adopted Design Criteria Manuals. The drawings and specifications contained here within, to the best of my knowledge, were prepared in accordance with these documents". This statement shall appear on the title sheet of the drawings and on the first page of specifications after the cover sheet. The "Certification Statement of Conformance with City Specifications" shall be signed and dated by the Engineer of Record.
- 2.23 The consultant shall submit plans and specifications to Department of Environment and Natural Resources for approval, and shall address any comments or corrections required.
- 2.24 Prior to the advertisement for bids, arrange and conduct a public open house with affected residents. Notice of the open house shall be mailed to all property owners adjacent to the proposed work areas, as well as those in the immediate area who may be directly impacted by the conduct of the construction, as determined by the City.

11th STREET ALLEY SANITARY SEWER RECONSTRUCTION PROJECT
City Project No. SS08-1728/ CIP No. 50422

TASK 3 – BIDDING SERVICES:

This task consists of all services necessary for the administration of the Bidding Services of the project, and may include the following itemized services.

- 3.1 Submit sufficient information to the City of Rapid City project manager for completion of City Advertising Authority form.
- 3.2 Print and issue plans and specifications to bidders, and five (5) copies to the City of Rapid City, refer to "Deliverable" above in Task 2. Maintain a plan holders list.
- 3.3 Print and distribute five (5) copies plans/ drawings to the City of Rapid City at 11" x 17" scale for construction services personnel.
- 3.4 Arrange and conduct a Pre-bid Conference. Record attendance and minutes. Distribute copies to all attendees.
- 3.5 Issue addenda to the bid documents as required.
- 3.6 Attend the bid opening (to be held at the City Finance Office).
- 3.7 Attend Public Works Committee and Council Meetings as required.
- 3.8 Prepare the Bid Tab in City of Rapid City Microsoft Excel project book format and submit electronic Bid Tab and a printed hard copy to Engineering Services within one (1) working day of the bid opening. Forward a copy of the final bid tab to all bidders and project manager.
- 3.9 Present award recommendation to City of Rapid City project manager.
- 3.10 Prepare Notice-of-Award letter for City of Rapid City project manager signature and distribution to contractor for execution.
- 3.11 Prepare contracts and submit to contractor for execution.
- 3.12 Review construction contract documents from the contractor and submit to City of Rapid City project manager for distribution to City Attorney's office for approval and signature of the Mayor and Finance Officer.

ARTICLE II OWNERS RESPONSIBILITY

Except as otherwise provided herein, **OWNER** shall do the following in a timely manner so as not to delay the services of **CONSULTANT**, and shall bear all costs incident thereto:

- 2.1 Designate a person to act as **OWNER'S** representative with respect to the services to be performed or furnished by **CONSULTANT** under this Agreement.
- 2.2 Provide all criteria and full information as to **OWNER'S** requirements for the **PROJECT**, including design objectives and constraints, capacity and performance requirements, and any budgetary limitations.
- 2.3 Assist **CONSULTANT** by placing at **CONSULTANT'S** disposal all available information pertinent to the **PROJECT** including previous design reports and any other data relative to design or construction of the **PROJECT**.

11th STREET ALLEY SANITARY SEWER RECONSTRUCTION PROJECT
City Project No. SS08-1728/ CIP No. 50422

ARTICLE III TIMES FOR RENDERING SERVICES

CONSULTANT'S services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the **PROJECT**. Unless specific periods of time or specific dates for providing services are specified in this Agreement, **CONSULTANT'S** obligation to render services hereunder will extend for a period which may reasonably be required for the preparation of the Plans and Bidding Documents, including extra work and required extensions thereto.

- 3.1 The **CONSULTANT** will provide complete final plans, specifications, and contract documents for an anticipated bid opening date of March 31, 2009.

ARTICLE IV PAYMENTS TO CONSULTANT FOR SERVICES

- 4.1 **OWNER** shall pay to **CONSULTANT** for services performed in accordance with **ARTICLE I** on a per-diem basis in accordance with the attached Exhibit A, the **CONSULTANTS** hourly rates.
- 4.2 In addition to payments provided for in paragraph 4.1, **OWNER** shall pay **CONSULTANT** for Reimbursable Expenses incurred by **CONSULTANT** including mileage at the rates identified in Exhibit A.
- 4.3 The **CONSULTANT** will invoice the **OWNER** monthly for the services provided. Net payment for these services is due within thirty (30) days.
- 4.4 The maximum estimated fee for Article I, Tasks 1-3, is **\$38,115**.
- 4.5 The **CONSULTANT** will not exceed the amounts in paragraphs 4.4 without prior authorization by the **OWNER**.

ARTICLE V ADDITIONAL SERVICES

- 5.1 If additional services beyond those contained in the scope of services must be performed, this agreement will be amended to identify the change in scope and the compensation due to the **CONSULTANT**.

ARTICLE VI OPINIONS OF COST

- 6.1 **CONSULTANT'S** opinions of probable Construction Cost provided for herein are to be made on the basis of **CONSULTANT'S** experience and qualifications and represent **CONSULTANT'S** best judgment as an experienced and qualified professional engineer generally familiar with the construction industry. However, since **CONSULTANT** has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractors methods of determining prices or over competitive bidding or

11th STREET ALLEY SANITARY SEWER RECONSTRUCTION PROJECT
City Project No. SS08-1728/ CIP No. 50422

market conditions, **CONSULTANT** cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by **CONSULTANT**.

ARTICLE VII GENERAL TERMS AND CONDITIONS

- 7.1 All services will be performed in accordance with the **CONSULTANT'S GENERAL TERMS AND CONDITIONS-RAPID CITY**, dated January 25, 2006 which are attached hereto and incorporated into this agreement by reference.
- 7.2 This Agreement represents the entire and integrated agreement between the **OWNER** and the **CONSULTANT** covering the services set forth herein and supersedes any prior negotiations, representations, or agreements therefore, either written or oral. This Agreement may be amended only by written instrument signed by both the **OWNER** and the **CONSULTANT**.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the date and year first above written.

THE CITY OF RAPID CITY, SOUTH DAKOTA

Alan Hanks, Mayor

ATTEST:

James F. Preston
Finance Officer

Date: _____

FERBER ENGINEERING COMPANY, INC.

BY: 

Dan P. Ferber, President

Date: 11/19/08

GENERAL TERMS AND CONDITIONS- RAPID CITY

1. Ferber Engineering Company, Inc., herein referred to as FEC, will bill the Client monthly with net payment due in thirty (30) days. ~~Past due balances will be subject to a service charge at a rate of 1.5% per month.~~ In addition, FEC may, after giving seven (7) days notice, suspend service under any agreement until the Client has paid in full all amounts due for services rendered and expenses incurred, including service charges for past due invoices.
2. The stated fees and scope of services constitute our best estimate of the fees and tasks required to perform the services as defined. This agreement, upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development services, activities often cannot be fully defined during the initial planning. As the project does progress, facts and conditions uncovered may reveal a change in direction that may alter the scope of services. FEC will promptly inform the Client in writing of such situations so that changes in this agreement can be renegotiated.
3. Costs and schedule commitments shall be subject to renegotiation for delays caused by the Client's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdowns, acts of God, or the public enemy, or acts or regulations of any governmental agency. Temporary delays of services caused by any of the above which results in additional costs beyond those outlined may require renegotiation of this agreement.
4. FEC will maintain insurance coverage for: Workers Compensation, General Liability, Professional Liability, and Automobile Liability. FEC shall at all times during the term of this Agreement maintain its General Liability insurance with a minimum of a One Million Dollar (\$1,000,000) limit per occurrence or equivalent. FEC shall furnish the Client with a certificate of insurance acceptable to the Client. Such certificate shall be attached hereto and incorporated herein along with a statement generally describing the coverage therein contained. Said insurance shall name the City of Rapid City as an additional insured.
5. It is acknowledged by both parties that FEC's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event FEC or any other party encounters asbestos or toxic materials at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of FEC's services, FEC may, at their option and without liability for consequential or any other damages, suspend performance of services on the project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and or remove the asbestos or hazardous or toxic materials, and warrant that the jobsite is in full compliance with applicable laws and regulations.
6. The Client agrees to provide such legal, accounting, and insurance counseling services as may be required for the project.
7. Termination of this agreement by the Client or FEC shall be effective upon seven (7) days written notice to the other party. The written notice shall include the reasons and details for termination. FEC will prepare a final invoice showing all charges incurred through the date of the termination. Payment is due as stated in Paragraph 1. If the Client violates any of the agreements entered into between FEC and the Client or if the Client fails to carry out any of the duties contained in these terms and conditions, FEC may upon seven (7) days written notice, suspend services without further obligation or liability to the Client unless, within such seven (7) day period, the Client remedies such violation to the reasonable satisfaction of FEC. If FEC violates any of the agreements entered into between the Client and FEC or if FEC fails to carry out any of the duties contained in these terms and conditions, Client may upon seven (7) days written notice, suspend payment without further obligation or liability to FEC unless, within such seven (7) day period, FEC remedies such violation to the reasonable satisfaction of the Client.
8. All documents including Drawings and Specifications provided or furnished by FEC pursuant to this Agreement are instruments of service in respect of the Project and FEC shall retain an ownership therein. Reuse of any documents pertaining to this project by the Client on extensions of this project or on any other project shall be at the Client's risk. The Client agrees to defend, indemnify, and hold harmless FEC from all claims, damages, and expenses including attorney's fees arising out of such reuse of the documents by the Client or by others acting through the Client.
9. FEC will endeavor to provide all services in accordance with generally accepted professional practices. FEC will not provide or offer to provide services inconsistent with or contrary to such practices nor make any warranty or guarantee, expressed or implied, nor to have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, FEC will not accept those terms and conditions offered by the Client in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly accepted in writing. Written acknowledgement of receipt of the actual performance of

General Terms and Conditions-Rapid City

January 25, 2006

Page 1

11th STREET ALLEY SANITARY SEWER RECONSTRUCTION PROJECT
City Project No. SS08-1728/ CIP No. 50422

services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

10. FEC intends to serve as the Client's professional representative for those services as defined in this agreement and to provide advice and consultation to the Client as a professional. Any opinions of probable project cost, approvals, and other decisions made by FEC for the Client are rendered on the basis of experience and qualifications and represent FEC's professional judgment.
11. This agreement shall not be construed as giving FEC the responsibility or authority to direct or supervise construction means, methods, techniques, sequences, or procedures of construction selected by any contractors or subcontractors or the safety precautions and programs incident to the work of any contractors or subcontractors.
12. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. 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.
13. In the event that any section(s), or provision(s) of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).

11th STREET ALLEY SANITARY SEWER RECONSTRUCTION PROJECT
City Project No. SS08-1728/ CIP No. 50422

EXHIBIT A

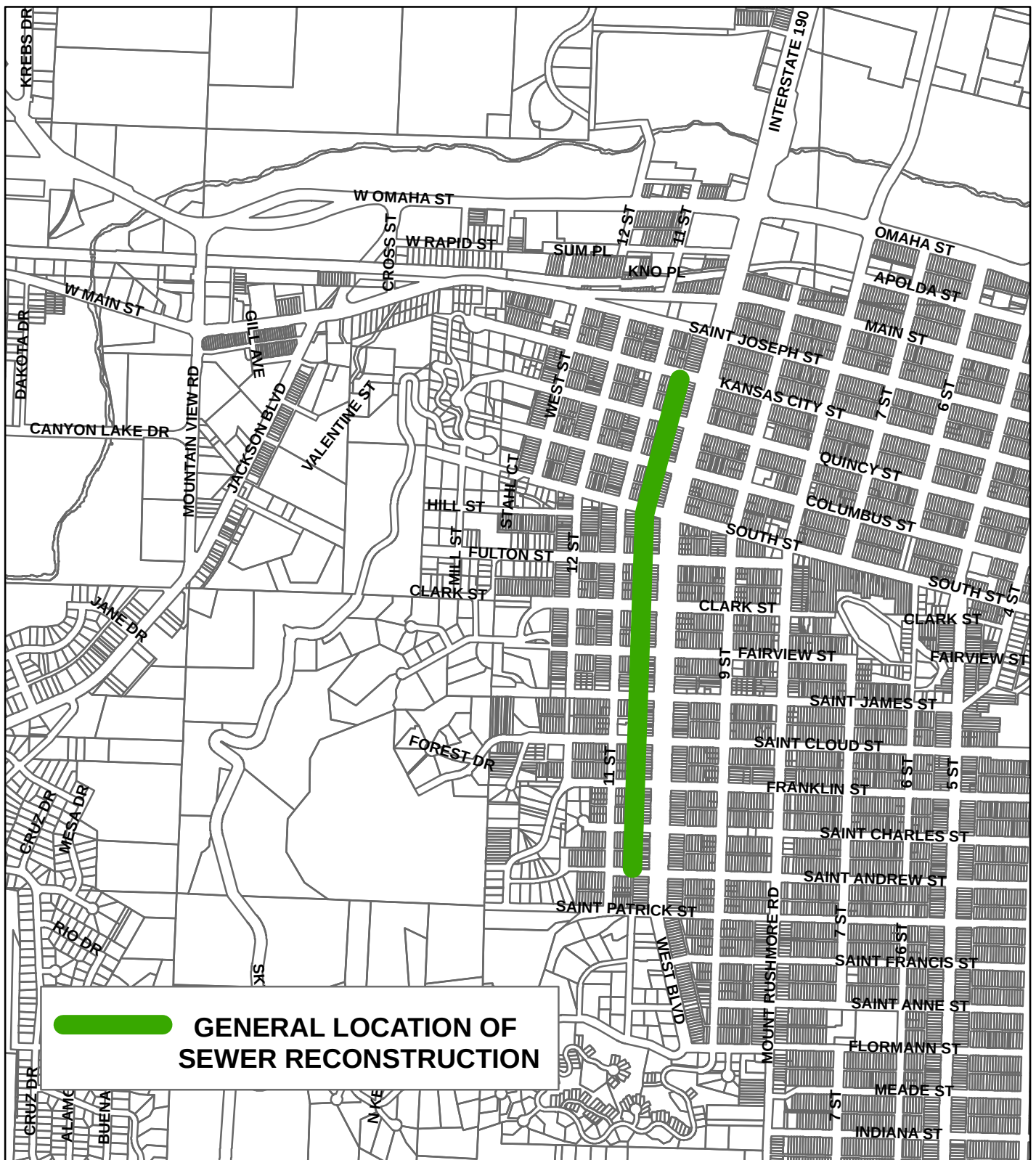
2009 SCHEDULE OF CHARGES

<u>EMPLOYEE CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal-In-Charge	\$115.00
Registered Land Surveyor	\$115.00
Registered Professional Engineer	\$105.00
Graduate Engineer III	\$70.00
Graduate Engineer II	\$65.00
Senior Technician II	\$70.00
Senior Technician I	\$65.00
Technician	\$50.00
Survey Crew 2-Man	\$95.00
Drafter	\$60.00
Clerical	\$55.00
Mileage	\$.585
GPS Survey	\$20.00 + Tech*
*Tech includes hourly rate of employee plus expenses	

PRINTING CHARGES

Bond	\$.20/sq ft
Vellum	\$.30/sq ft
Mylar	\$.50/sq ft
Clear Film	\$.50/sq ft
Photocopies, 8 ½" x 11" (BW)	\$.10
Photocopies, 8 ½" x 11" (Color)	\$.50
Binding (up to 1")	\$ 2.00

EXHIBIT "A"



**WEST BLVD. AREA SEWER RECONSTRUCTION
PHASE 2 - 11TH STREET ALLEY SEWER
PROJECT NO. SS09-1772 CIP NO. 50422**