

Agreement Between City and Engineer For Professional Services

AGREEMENT made November 3, 2009, between the City of Rapid City, SD (City) and FMG, Inc., (Engineer), 3700 Sturgis Road, Rapid City, SD 57702. City intends to obtain services for Jackson Boulevard Utilities, Project No. SSW09-1509, CIP No. 50351. The scope of services is as described in Exhibit A.

The City and the Engineer agree as follows:

The Engineer shall provide professional engineering services for the City in all phases of the Project, serve as the City's professional engineering representative for the Project, and give professional engineering consultation and advice to the City while performing its services.

Section 1—Basic Services of Engineer

1.1 General

- 1.1.1 The Engineer shall perform professional services described in this agreement, which include customary engineering services.
- 1.1.2 All work shall be performed by or under the direct supervision of a professional Engineer licensed to practice in South Dakota.

1.2 Scope of Work

The Engineer shall:

- 1.2.1 Consult with the City, other agencies, groups, consultants, and/or individuals to clarify and define requirements for the Project and review available data.
- 1.2.2 Perform the tasks described in the Scope of Services. (See Exhibit A.)
- 1.2.3 Conduct a location survey of the Project to the extent deemed necessary to provide adequate site information.
- 1.2.4 Prepare a report presenting the results of the study as outlined in the scope of services.

Section 2—Information Provided by City

The City will provide any information in its possession for the project at no cost to the Engineer.

Section 3—Notice to Proceed

The City will issue a written notification to the Engineer to proceed with the work. The Engineer shall not start work prior to receipt of the written notice. The Engineer shall not be paid for any work performed prior to receiving the Notice to Proceed.

Section 4—Mutual Covenants

4.1 General

- 4.1.1 The Engineer shall not sublet or assign any part of the work under this Agreement without written authority from the City.
- 4.1.2 The City and the Engineer each binds itself and partners, successors, executors, administrators, assigns, and legal representatives to the other party to this agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, regarding all covenants, agreements, and obligations of this agreement.
- 4.1.3 Nothing in this agreement shall give any rights or benefits to anyone other than the City and the Engineer.
- 4.1.4 This agreement constitutes the entire agreement between the City and the 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.
- 4.1.5 The Engineer shall make such revisions in plans which may already have been completed, approved, and accepted by the City, as are necessary to correct errors or omissions in the plans, when requested to do so by the City, without extra compensation therefore.
- 4.1.6 If the City requests that previously satisfactorily completed and accepted plans or parts thereof be revised, the Engineer shall make the revisions requested by the City. This work shall be paid for as extra work.
- 4.1.7 If the City changes the location from the one furnished to the Engineer, or changes the basic design requiring a new survey for the portions so changed, the redesign will be paid for as extra work.
- 4.1.8 The City may at any time by written order make changes within the general scope of this Agreement in the work and services to be performed by the Engineer. Any changes which materially increase or reduce the cost of or the time required for the performance of the Agreement shall be deemed a change in the scope of work for which

an adjustment shall be made in the Agreement price or of the time for performance, or both, and the Agreement shall be modified in writing accordingly. Additional work necessary due to the extension of project limits shall be paid for as extra work.

- 4.1.9 Extra work, as authorized by the City, will be paid for separately and be in addition to the consideration of this Section.
- 4.1.10 This Agreement may be terminated (a) by the City with or without cause upon seven days' written notice to the Engineer and (b) by the Engineer for cause upon seven days' written notice to the City. If the City terminates the agreement without cause, the Engineer will be paid for all services rendered and all reimbursable expenses incurred prior to the date of termination.

If termination is due to the failure of the Engineer to fulfill its agreement obligations, the City may take over the work and complete it by agreement or otherwise. In such case, the Engineer shall be liable to the City for any additional cost occasioned thereby.

- 4.1.11 The City or its duly authorized representatives may examine any books, documents, papers, and records of the Engineer involving transactions related to this agreement for three years after final payment.
- 4.1.12 The City shall designate a representative authorized to act on the City's behalf with respect to the Project. The City or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Engineer in order to avoid unreasonable delay in the orderly and sequential progress of the Engineer's services.
- 4.1.13 The City will give prompt written notice to the Engineer if the City becomes aware of any fault or defect in the Project or nonconformance with the Project Documents.
- 4.1.14 Unless otherwise provided in this Agreement, the Engineer and the Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos products, polychlorinated biphenyl (PCB), or other toxic substances.
- 4.1.15 Neither the City nor the Engineer, nor its Consultants, shall hold the other liable for any claim based upon, arising out of, or in any way involving the discharge, dispersal, release or escape of smoke,

vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants.

- 4.1.16 Neither the City nor the Engineer, nor its Consultants, shall hold the other liable for any claim based upon, arising out of, or any way involving the specification or recommendation of asbestos, in any form, or any claims based upon use of a product containing asbestos.
- 4.1.17 Engineer hereby represents and warrants that it does not fail or refuse to collect or remit South Dakota or City sales or use tax for transactions which are taxable under the laws of the State of South Dakota.

4.2 City of Rapid City NonDiscrimination Policy Statement

In compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination act of 1975, the Americans with Disabilities Act of 1990, and other nondiscrimination authorities it is the policy of the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701-5035, to provide benefits, services, and employment to all persons without regard to race, color, national origin, sex, disabilities/handicaps, age, or income status. No distinction is made among any persons in eligibility for the reception of benefits and services provided by or through the auspices of the City of Rapid City.

Engineer will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission, its agencies or representatives, to ascertain compliance with the above provisions.

This section shall be binding on all subcontractors or suppliers.

Section 5—Payments to the Engineer

5.1 Schedule of Pay Rates

The City will pay the Engineer for services rendered or authorized extra work according to the Engineer's hourly rate schedule. (See Exhibit B.)

5.2 Fee

The maximum amount of the fee for the services as detailed in Section 1.2 shall not exceed \$227,431.00 unless the scope of the project is changed as outlined in Section 4. If expenses exceed the maximum amount, the Engineer shall complete the design as agreed upon here without any additional compensation. Sub task dollar amounts may be reallocated to other tasks as long as the total fee is not exceeded. (See Exhibit C.)

5.3 **Progress Payments**

Monthly progress payments shall be processed by the City upon receipt of the claim as computed by the Engineer based on work completed during the month at the rates established in Section 5.1 and approved by the City.

Section 6—Completion of Services

The Engineer shall complete services on or before March 15, 2010.

Section 7—Insurance Requirements

7.1 **Insurance Required**

The Engineer shall secure the insurance specified below. The insurance shall be issued by insurance company(s) acceptable to the City and may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance including any policy endorsements shall be provided to the City prior to or upon the execution of this Agreement.

7.2 **Cancellation**

The Engineer will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The Contractor agrees to hold the City harmless from any liability, including additional premium due because of the Contractor's failure to maintain the coverage limits required.

7.3 **City Acceptance of Proof**

The City's approval or acceptance of certificates of insurance does not constitute City assumption of responsibility for the validity of any insurance policies nor does the City represent that the coverages and limits described in this agreement are adequate to protect the Engineer, its consultants or subcontractors interests, and assumes no liability therefore. The Engineer will hold the City harmless from any liability, including additional premium due, because of the Engineer's failure to maintain the coverage limits required.

7.4 **Specific Requirements**

7.4.1 Workers' compensation insurance with statutory limits required by South Dakota law, including Coverage B—Employer's Liability—not less than \$1,000,000 each accident, \$1,000,000 disease—policy limits. The required limit may be met by excess liability (umbrella) coverage.

- 7.4.2 Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury and property damage liability coverage with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. If the occurrence form is not available, claims-made coverage shall be maintained for three years after completion of the terms of this agreement. The policy shall name the City and its representatives as an additional insured.
- 7.4.3 Automobile liability insurance covering all owned, nonowned, and hired automobiles, trucks, and trailers. The coverage shall be at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.
- 7.4.4 Professional liability insurance providing claims-made coverage for claims arising from the negligent acts, errors or omissions of the Engineer or its consultants, in the amount of \$1,000,000 each occurrence and \$1,000,000 annual aggregate. Coverage shall be maintained for at least three years after final completion of the services.

Section 8—Hold Harmless

The Engineer hereby agrees to hold the City harmless from any and all claims or liability including attorneys' fees arising out of the professional services furnished under this Agreement, and for bodily injury or property damage arising out of services furnished under this Agreement, providing that such claims or liability are the result of a negligent act, error or omission of the Engineer and/or its employees/agents arising out of the professional services described in the Agreement.

Section 9—Independent Business

The parties agree that the Engineer operates an independent business and is contracting to do work according to his own methods, without being subject to the control of the City, except as to the product or the result of the work. The relationship between the City and the Engineer shall be that as between an independent contractor and the City and not as an employer-employee relationship. The payment to the Engineer is inclusive of any use, excise, income or any other tax arising out of this agreement.

Section 10—Funds Appropriation

If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this agreement, this agreement shall impose no obligation on the City for payment. This agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or

damage shall accrue to the benefit of the Engineer, its successors or assignees, for any further payments. For future phases of this or any project, project components not identified within this contract shall not constitute an obligation by the City until funding for that component has been appropriated.

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

City of Rapid City:

Engineer:

MAYOR

FMG, INC.

DATE: _____

DATE: _____

ATTEST:

FINANCE OFFICER

Reviewed By:



PROJECT MANAGER

DATE: 10/22/2009

FMG ENGINEERING
SCOPE OF SERVICES
FOR
JACKSON BOULEVARD UTILITIES
Rapid Creek Bridge to Mountain View Road
Project No. SSW09-1509 CIP No. 50351
PCN X01D

GENERAL

The City of Rapid City proposes to reconstruct various water transmission lines, water distribution lines, sanitary sewers, storm sewers and other drainage improvements in conjunction with SDDOT reconstruction of a portion of Jackson Boulevard.

This project is to be let in conjunction with South Dakota Department of Transportation Project P 0044(129)42, SD Highway 44, Pennington County, Grading, PCC Paving, Storm Sewer, Curb & Gutter, Roadway Lighting, & Traffic Signals, PCN 00X9.

The project limits include Jackson Boulevard from the east end of the Rapid Creek Bridge to the intersection of Mountain View Road, tie-ins to the adjacent streets and existing utilities, new water mains, and adjacent areas needed for storm sewer collection improvements and facilities including stormwater quality.

FMG, Inc. was selected through the City's Consultant selection process to provide engineering services for Tasks 1 through 5 for the referenced project. The Scope of Work in this contract is for Task 1 - Preliminary Design Services, only. A separate contract(s) will be negotiated and prepared for Task 2 – Final Design Services, Task 3 – Bidding Period Services, Task 4 – Basic Construction Services and Task 5 – Expanded Construction Services.

The work to be completed under this contract is for Task 1 – Preliminary Design Services and shall be in general conformance with the RFP. A list of individual tasks and subtasks to complete the work is shown in Exhibit C - Task Schedule. The list of tasks will not be necessarily limited to those shown. Tasks will be added or deleted as needed to complete the project.

RATE SCHEDULE
FOR
JACKSON BOULEVARD UTILITIES
Rapid Creek Bridge to Mountain View Road
Project No. SSW09-1509 CIP No. 50351
PCN X01D

FMG ENGINEERING – PRIME CONSULTANT

Professional Engineer – Principal	\$120.00/hr
Professional Engineer – Senior Engineer	\$95.00/hr
Professional Engineer – Design Engineer	\$90.00/hr
Computer Drafting Technician	\$60.00/hr
Registered Land Surveyor	\$75.00/hr
Survey Crew	\$110.00/hr
Clerical	\$45.00/hr

WYSS ASSOCIATES – LANDSCAPE ARCHITECTURE SUBCONSULTANT

Project Director	\$140.00/hr
Senior Landscape Architect	\$100.00/hr
Design Associate - Senior	\$65.00/hr
Design Associate	\$60.00/hr
Administrative	\$28.00/hr

DOWL HKM/RUSTNOT – CATHODIC PROTECTION SUBCONSULTANT

Senior Manager	\$150.00/hr
Project Engineer	\$95.00/hr
Senior AutoCAD Tech	\$85.00/hr
Support	\$55.00/hr

TASK SCHEDULE

TASK 1	PRELIMINARY DESIGN SERVICES (PD)	
Subtask PD1	Meetings, General Investigative, Overall Coordination	
PD1.1	Kickoff Meeting and Minutes	\$1,030.00
PD1.2	Bi Weekly Meetings Through Preliminary Design Submittal + Minutes	\$5,130.00
PD1.3	Interim & Submittal Meetings Outside of Weekly Mtgs + Minutes	\$3,450.00
PD1.4	Public Meetings	\$1,330.00
PD1.5	Property Owner Questionnaire	\$1,665.00
PD1.6	Compile and Analyze Results of Questionnaire	\$980.00
PD1.7	Individual Property Owner Meetings & Documentation	\$3,740.00
PD1.8	Obtain/Review City Reports, As Builts, Prev. Platting Issues, Etc	\$3,920.00
PD1.9	Obtain & Initial Familiarization with State Plans and Reports	\$6,800.00
PD1.10	Water and Sewer Cards	\$2,040.00
PD1.11	Obtain and Review City Utility Maintenance Records	\$1,440.00
PD1.12	Utility/Roadway Template Sections -Overall Location Issues	\$3,260.00
PD1.13	Interim Technical Memorandums	\$3,060.00
PD1.14	Preliminary Right of Way Requirements/Documents	\$2,480.00
PD1.15	Review of SDDOT Plans as City Representative/Criteria Check	\$2,000.00
PD1.16	Special Exception Requests - City Items only	\$850.00
PD1.17	Overall Project Coordination	\$5,160.00
PD1.18	Compile Overall Preliminary Design Report and Cost Estimate	\$3,970.00
Subtask PD1 Total		\$52,305.00

Subtask PD2	Survey	
PD2.1	Survey Research and Computations	\$1,440.00
PD2.2	Property Corner Search	\$2,640.00
PD2.3	Horizontal and Vertical Control	\$2,640.00
PD2.4	Utility Locates Coordination Including Depth Assumptions	\$1,050.00
PD2.5	Survey Manholes In Project Area to Verify Inverts	\$2,640.00
PD2.6	Sewer Service Line/Private Sewers Mt View to State St	\$1,760.00
PD2.7	Detailed Topo Areas	\$10,560.00
PD2.8	Drafting of Survey/Set Up to Match SDDOT	\$2,880.00
PD2.9	Field Check	\$900.00
Subtask PD2 Total		\$26,510.00

Subtask PD3	Water Main Design Analysis	
PD3.1	Existing Facilities Research/Inventory	\$2,880.00
PD3.2	Local Water Main Sizing/Modeling	\$1,200.00
PD3.3	Local Water Main Locations and Routing	\$2,040.00
PD3.4	Fire Protection Design Requirements	\$240.00
PD3.5	Raw Water Alignment/Location/Phasing Analysis Preliminary Analysis Only	\$4,320.00
PD3.6	"Offsite" 20" Water Main Alignment/Location Analysis (Park Drive to Rapid Creek)	\$2,400.00
PD3.7	"Onsite 20 Inch Water Main Alignment and Location Analysis	\$1,320.00
PD3.8	Alternates Analysis	\$2,520.00
PD3.9	Constructability/Phasing	\$1,200.00
PD3.10	Subsection Design Report and Cost Estimates	\$2,880.00
PD3.11	Cathodic Protection-Preliminary Design	\$2,100.00
Subtask PD3 Total		\$23,200.00

Subtask PD4	Sanitary Sewer	
PD4.1	Sanitary Sewer Research/Inventory/O&M Issues	\$2,040.00
PD4.2	Rehab/Replacement/Alternates Analysis	\$1,200.00
PD4.3	Reconstruction Routing and Location Analysis	\$1,920.00
PD4.4	Service Line Requirements/Non Conforming Services	\$1,560.00
PD4.5	Offsite Needs/Requirements	\$960.00
PD4.6	Sanitary Sewer Sizing Analysis	\$960.00
PD4.7	Constructability/Diversion/Phasing	\$1,200.00
PD4.8	Subsection Design Report and Cost Estimates	\$2,880.00
Subtask PD4 Total		\$12,720.00

Subtask PD5	Storm Drainage	
PD5.1	Existing Facilities Research/Inventory	\$1,380.00
PD5.2	Remodel Jackson Blvd Basin With HMS (Upper Tributary Only)	\$4,480.00
PD5.3	Jackson Valley Floor Area Runoff Analysis --Area only as required for project	\$2,000.00
PD5.4	Arrowhead Minor Basin Runoff Calculations--Area only as required for project	\$2,000.00
PD5.5	Determine Storm Sewer Criteria - SDDOT Vs City	\$620.00
PD5.6	Roadway Storm sewer Sizing, Alts with SDDOT & City Requirements	\$2,760.00
PD5.7	Related Future Storm Sewer & Drainage Needs Outside of SDDOT Work Limits (<i>Study only, no design</i>)	\$2,000.00
PD5.8	Verify Corps of Engineers Levee Requirements	\$240.00
PD5.9	FEMA Floodplain Permit Requirements	\$860.00
PD5.10	Water Quality Features Preliminary Design Analysis	\$4,500.00
PD5.11	Constructability/Phasing	\$480.00
PD5.12	Subsection Design Report and Cost Estimates(Include City vs SDDOT)	\$5,080.00
Subtask PD5 Total		\$26,400.00

Subtask PD6	35% Preliminary Design Drawings	
PD6.1	Set Up SDDOT Drawing Files For City Portion of Project	\$3,040.00
PD6.2	Update Drawing files as SDDOT provides changes	\$1,820.00
PD6.3	Cover Sheet	\$120.00
PD6.4	Phasing Sheets	\$720.00
PD6.5	Survey Alignment Control	\$210.00
PD6.6	Plan Sheets (DOT area sheets - 15)	\$10,965.00
PD6.7	Profile Sheets (DOT area Sheets - 15)	\$10,965.00
PD6.8	Utility Plan Sheets Beyond SDDOT Limits (Estimate 5)	\$4,820.00
PD6.9	Utility Profile Sheets Beyond SDDOT Limits (Estimate 5)	\$4,820.00
PD6.10	Stormwater Quality Plan Sheets (WTP Area -Estimate 2 sheets)	\$3,940.00
PD6.11	Stormwater Quality Plan Sheets (Other Areas -Estimate 4 sheets)	\$3,740.00
PD6.12	Stormwater Quality Profile or Grading Sheets (Estimate 6 sheets)	\$2,740.00
PD6.13	Special Details	\$3,400.00
Subtask PD6 Total		\$51,300.00

Subtask PD7	Landscape Architecture at Stormwater Quality Area	
PD7.1	Preliminary Design	\$13,636.00

Subtask PD8	Geotechnical Investigation	
PD8.1	23 boreholes with Jackson Blvd, Stormwater Quality, and Raw Water Line Route	\$8,845.00

	<i>(SDDOT borings not applicable for City Design)</i>	
PD8.2	Resistivity Testing	\$800.00
PD8.3	Hydrocarbon contamination screening <i>(PID)</i>	\$100.00
PD8.4	Laboratory Testing	\$3,300.00
PD8.5	Report Preparation	\$4,415.00
PD.8.6	Meetings	\$2,000.00
Subtask PD8 Total		\$19,460.00

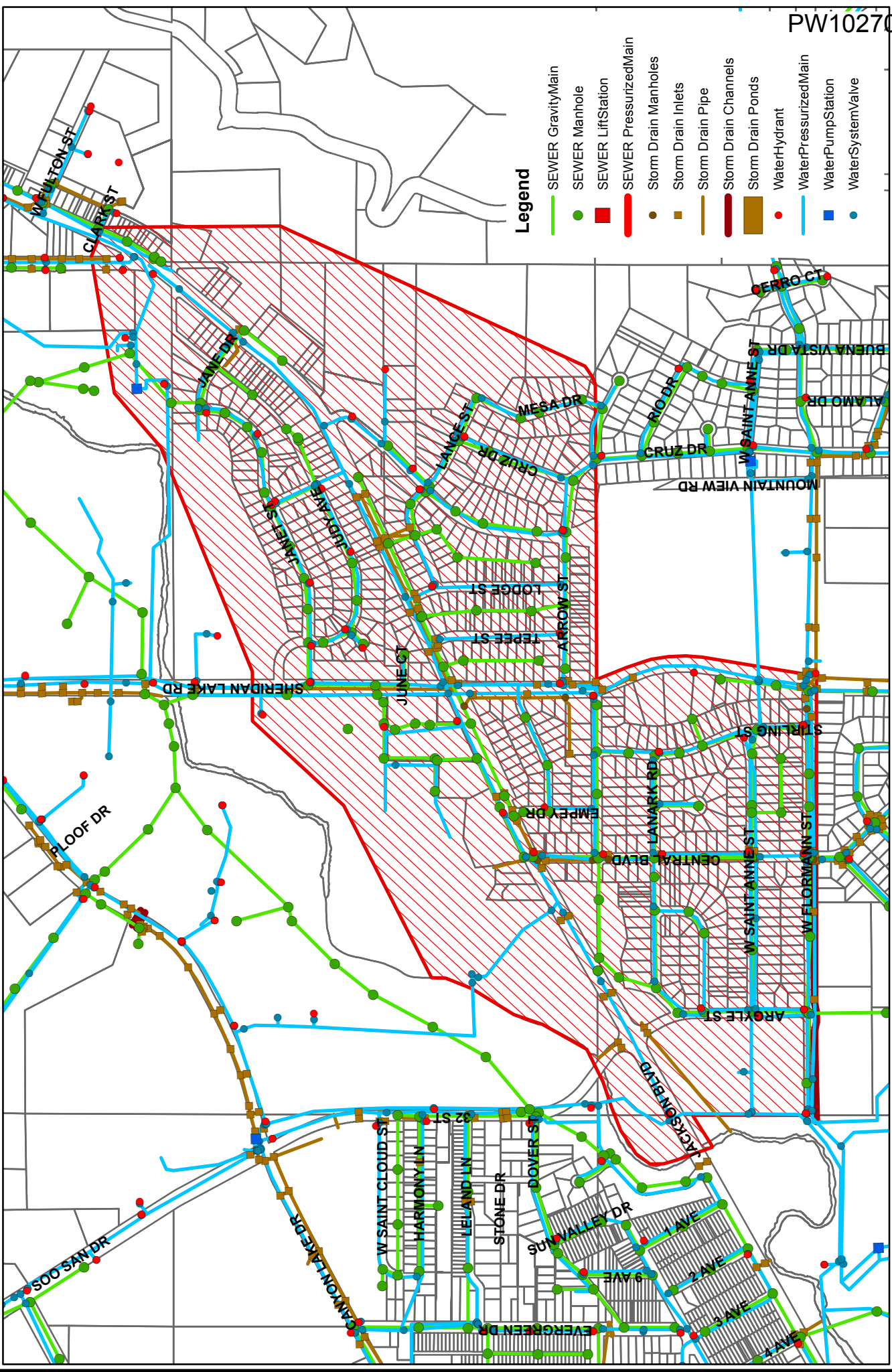
Summary

Subtotal Task 1-Preliminary Design Services	\$225,431.00
Expendables and Mileage	\$2,000.00
TOTAL PELIMINARY DESIGN SERVICES	\$227,431.00

Legend

- SEWER GravityMain
- SEWER Manhole
- SEWER LiftStation
- SEWER PressurizedMain
- Storm Drain Manholes
- Storm Drain Inlets
- Storm Drain Pipe
- Storm Drain Channels
- Storm Drain Ponds
- WaterHydrant
- WaterPressurizedMain
- WaterPumpStation
- WaterSystemValve

SCALE 1" = 80'



JACKSON BLVD UTILITIES PROJECT
PROJECT NO. SSW09-1509 CIP NO. 50351