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RAPID CITY
PUBLIC WORKS

PROFESSIONAL ENGINEERING SERVICES CONTRACT



Rapid City Water Reclamation Facility Digester Repair and Improvements

***Digester Control Building Improvements Project
Construction Phase Services***

City of Rapid City Project No. WRF09-1783



Professional Engineering Consultant: Burns & McDonnell Engineering Co., Inc.

PROFESSIONAL ENGINEERING SERVICES CONTRACT

February 16, 2010

Project: Rapid City WRF Digester Repair and Improvements
 Digester Control Building Improvements Project
 Construction Phase Services Contract
 City of Rapid City Project No. WRF09-1783

Owner Information:

City of Rapid City, South Dakota
 300 Sixth Street
 Rapid City, South Dakota 57701-2724

Contact: Mr. Rod Johnson, P.E.
 Phone: (605) 394-4154
 Fax: (605) 394-6636

Engineer:

Burns & McDonnell Engineering Co., Inc.
 9785 Maroon Circle, Suite 400
 Centennial, Colorado 80112

Contact: Mr. Darin Brickman, P.E.
 Phone: (303) 721-9292
 Fax: (303) 721-0563

PROJECT BACKGROUND

The City of Rapid City, South Dakota, (hereinafter OWNER) is in the process of improving the biosolids handling system at the Rapid City Water Reclamation Facility (WRF). Burns & McDonnell Engineering Company, Inc., (hereinafter ENGINEER) was contracted to conduct Phase I and Phase II of this project. Phase I consisted of evaluation of the current biosolids management system at the WRF with special emphasis on the original facility. At the completion of Phase I the ENGINEER, in conjunction with the OWNER, finalized the project scope, deliverable end products, and timeline for the project in the Phase I Findings Document. Based on and in accordance with the Phase I Findings Document, Phase II consisted of the Secondary Digester Cover and Gas Mixing Equipment Replacement Project.

This work shall consist of Construction Phase Services for the work designed by Burns & McDonnell and incorporated into the Contract Documents of the Digester Control Building Improvements Project No. WRF09-1783.

SCOPE OF SERVICES

The following is the Scope of Services to be provided by ENGINEER for the OWNER.

1. Conform Contract Documents completed by ENGINEER to be incorporated into a master construction bid set by OWNER.
 - 1.1. Attend meetings to discuss combining the multiple plan sets.
 - 1.2. Conform CADD drawings to final layout.
 - 1.3. Conform Specifications to final content.
2. Construction Phase Services: ENGINEER shall consult with and advise OWNER and act as OWNER'S ENGINEER as provided in OWNER'S General and Supplementary Conditions for the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of ENGINEER as assigned in said General and Supplementary Conditions shall not be modified without ENGINEER'S written consent. As OWNER'S consultant, ENGINEER shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs, or for Contractor's failure to perform construction work in accordance with the Contract Documents. ENGINEER shall provide for general administration of construction contract to the extent indicated in this Scope of Services and shall consult with and advise OWNER and act as OWNER'S representative as provided in the Contract Documents. OWNER'S instructions to Contractor shall be issued through OWNER. The ENGINEER shall not have authority to act on behalf of OWNER in dealings with Contractor as indicated in the Contract Documents, except as otherwise provided in writing.
 - 2.1. Preconstruction Meeting Preparation and Attendance: The ENGINEER shall attend the Preconstruction Meeting via teleconference. The OWNER'S on-site representative will schedule and conduct the meeting.
 - 2.2. Compliance Submittal Review: ENGINEER shall log, track, review and approve (or take other appropriate action in respect of) Compliance Submittals (i.e., Shop Drawings), Samples, vendor supplied O&M manuals (not written narratives by ENGINEER) and other submittals and data which Contractor is required to submit for general conformity to the Contract Documents. Compliance review will be limited to work items included in the ENGINEER'S contract documents.
 - 2.3. Construction Administration Engineering Services:
 - 2.3.1. ENGINEER shall provide technical engineering support to the OWNER during the construction of the project. ENGINEER shall submit all instructions and interpretation to OWNER for issuance by OWNER to Contractor; act as interpreter of the terms and conditions of the Contract Documents and judge of the performance there under by the parties thereto, and make decisions on claims of OWNER and Contractor(s) relating to the execution and progress of the Work and other matters and questions related thereto; but ENGINEER shall not be liable for the results of any such interpretations or decisions rendered by ENGINEER in good faith. OWNER shall be notified of any direct communication between ENGINEER and Contractor. ENGINEER shall be copied on any correspondence

between the OWNER and Contractor that pertains to work designed by ENGINEER for this project.

- 2.3.2. ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate for work designed by ENGINEER, and prepare Orders and Directives as required. The Orders and Directives shall be issued by the OWNER to the Contractor. ENGINEER shall review and evaluate requests for appropriate cost and scope of Change Orders that may be requested during the construction period including review for proper form and documentation. OWNER shall prepare Change Orders and process them for submittal based on ENGINEER'S recommendation.
- 2.4. Pay Request Review and Recommendations: OWNER'S representative will complete pay requests reviews and recommendations. This task will not be completed by ENGINEER. OWNER shall copy ENGINEER on pay requested related to work designed by ENGINEER.
- 2.5. Weekly Progress Meeting Attendance:
 - 2.5.1. In connection with completion of work by Contractor and designed by ENGINEER, while it is in progress, ENGINEER shall attend weekly progress meetings via telephone conference call. Based on the work, participation in thirty two (32) weekly meetings is contained in this scope of services.
 - 2.5.2. OWNER shall provide copies of meeting minutes to ENGINEER.
- 2.6. Construction Services Representative Site Visits:
 - 2.6.1. OWNER shall provide construction observation for the project and report to ENGINEER the activities of the Contractor. ENGINEER shall provide Construction Services Representative who will be the authorized representative of ENGINEER, who will possess the particular skills and qualifications necessary to fulfill the required duties, and who shall be present at the site to provide eight (8), two-day on-site observations (less trips may be possible if items below can be combined) of Contractor's work at ENGINEER-defined critical milestones during the construction phase including:
 - 2.6.1.1. Two (2) visits during construction of the new digester compressor building for structural observations and pipe connections
 - 2.6.1.2. Two (2) visits during construction of the new floor slabs in the existing digester complex building.
 - 2.6.1.3. One (1) visit at completion/start-up of the new mixing equipment.
 - 2.6.1.4. One (1) visit at completion/start-up of the new boilers/heat exchangers.
 - 2.6.1.5. One (1) visit at completion/start-up of the new sludge pumps.
 - 2.6.1.6. One (1) visit at completion/start up of the flare system.
 - 2.6.2. ENGINEER'S Construction Services Representative shall observe the progress and quality of the work as is reasonably necessary at the defined milestones of construction to determine if the work is proceeding in accordance with the Contract Documents. ENGINEER shall notify OWNER immediately if, in ENGINEER'S opinion, work does not conform to the Contract Document or requires special inspection or testing, and keep OWNER advised as necessary.

- 2.7. As-Constructed Drawings: ENGINEER shall furnish to the OWNER one (1) complete set of reproducible drawings on mylar or approved equal. The set of reproducible drawings furnished shall be "Revised According to Construction Records" in accordance with records provided by Contractor and ENGINEER'S Resident Project Representative. If mylar drawings are generated by a computer-aided drawing system, furnish drawings on magnetic disk or CD. If the system is other than AutoCAD, furnish drawing files as DXF files.
- 2.8. Two-Year Warranty Site Review: This task is not included in this scope of work.

RESPONSIBILITIES OF OWNER

The OWNER shall provide the following:

Assistance by placing at ENGINEER'S disposal all available information pertinent to the assignment including water reclamation facility as-constructed drawings and other water reclamation facility data required and requested by ENGINEER. Owner shall also provide construction observation services at intervals necessary to ensure non-conforming work is identified in a timely manner as detailed below.

3. OWNER'S Construction Services Representative shall provide construction observation services including:
 - 3.1. Review and monitor the progress schedule, schedule of Shop Drawing and other submittals and Schedule of Values prepared by Contractor.
 - 3.2. 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, and keep ENGINEER advised as necessary.
 - 3.3. Serve as OWNER'S liaison with Contractor, assist Contractor in understanding the intent of the Contract Documents, and review the project construction schedule and report conditions which may cause delays in project completion. Report clarifications and/or interpretations to Contractor and ENGINEER.
 - 3.4. Receive Compliance Submittals (i.e., Shop Drawings), samples and all other required submittals, and review for understanding with Contract Documents, and advise Contractor and ENGINEER of the commencement of any work requiring a submittal if the submittal has not been approved.
 - 3.5. Conduct on-site observations of the work in progress to determine if the work is in general proceeding in accordance with the Contract Documents.
 - 3.6. Report to ENGINEER whenever any work will not produce a completed project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the complete 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 as to work that should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

- 3.7. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof, and observe, record and report appropriate details relative to the test procedures and start-ups.
- 3.8. Maintain orderly files for correspondence, reports of job conferences, Compliance Submittals (i.e., Shop Drawings) and Samples, reproductions of original Contract Documents including all Work Change Directives, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to Contractor and other project related documents. Maintain an updated set of Contract Documents showing "Conforming to Construction Records" conditions based on the Contractor's records and the OWNER'S Construction Services Representative's observations and inspections.
- 3.9. Prepare and maintain a report or diary or log book recording Construction Services Representative's time and activities related to the project, Contractor's hours and operations on the job, weather conditions nature and location of work being performed, verbal instructions and interpretations given to Contractor, and specific observations. Record any occurrence or work that may result in a claim for a change in contract amount or time. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
- 3.10. Review Applications for Payment with Contractor for compliance with the established procedure for submission, 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, and take appropriate action for disposition prior to ENGINEER'S review.

DELIVERABLES

The ENGINEER shall provide the deliverables stated in the Scope of Services. All Issued-for-Bid and Issued-for-Construction documents shall be provided in Microsoft Word and AutoCAD 2008 file format on CD. ENGINEER shall provide OWNER two (2) PDF files of contract drawings for reproduction purposes with one file being for 11"x17" format and the other shall be for 22"x34" format. ENGINEER shall provide OWNER PDF file of contract specifications for OWNER'S reproduction purposes. ENGINEER shall be responsible for reproduction of drawings and specifications used for ENGINEER'S purposes.

Reuse of Documents: All documents prepared or furnished by ENGINEER (and ENGINEER'S independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project, and ENGINEER shall have the ownership and property interest therein whether or not the Project is completed. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER'S independent professional associates or consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER'S independent professional associates and consultants from and

against all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting there from. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

Electronic Media: Any electronic media (computer disks, CDs, tapes, and similar items) furnished with respect to ENGINEER'S services are for OWNER'S information and convenience only. Such media are not to be considered part of ENGINEER'S instruments of service. (Due to the potential that information contained in electronic media can be modified by OWNER or others, ENGINEER, at its option, may remove all indicia of ENGINEER'S ownership and involvement from each electronic display.) ENGINEER shall not be liable for loss or damage directly or indirectly, arising out of use of electronic media including, but not limited to, any loss of business or incidental or consequential damage. OWNER shall assume all risk and release, indemnify, and hold harmless ENGINEER, its officers, directors, employees, servants, agents, successors, and assigns, from and against each and every claim or cause of action that OWNER or others may have or which may arise in the future respecting use of the electronic media.

TIME OF SERVICE

ENGINEER will proceed with providing the services set forth herein immediately upon execution of this Agreement. The Construction Phase Services shall be completed in the same time period as the Contractor's work schedule required by the issue for construction contract documents. Appropriate adjustments in time and if necessary, compensation, will be considered to facilitate any extensions in the general contractor's time.

COST REIMBURSIBLE NOT TO EXCEED

A. Amount of Payment:

1. For services performed, OWNER shall pay ENGINEER the sum of amounts determined as follows:
 - a. For time spent by personnel, payment at the hourly rates indicated on the attached fee schedule (Exhibit A). Such rates include overhead and profit. The schedule is effective for the Construction Phase Services associate with this project only.
 - b. For expenses incurred by ENGINEER, such as authorized travel and subsistence including airfare, food, lodging, automobile rental, commercial services, and incidental expenses, at the cost to ENGINEER.
 - c. For reproduction, printing, long-distance telephone calls, facsimile transmissions, company vehicle usage, testing apparatus, computer services and computer-assisted drafting (CAD), amounts will be charged according to the ENGINEER'S standard rates as identified in this contract (Exhibit B).

- d. For professional services rendered by others as subcontractor(s) to ENGINEER will be billed at the cost to ENGINEER plus 10 percent.
2. Total payment for the Scope of Services described herein shall not exceed Eighty Two Thousand Five Hundred and Forty Three dollars (\$82,543) without written approval of OWNER. Exhibit C presents a detailed Professional Engineering Services Fee Estimate.
3. ENGINEER shall not begin work on any phase of the project without written authorization by the OWNER.

TERMS AND CONDITIONS

The attached Terms and Conditions for Professional Services is incorporated and made a part of this Agreement.

BURNS & MCDONNELL ENGINEERING CO.

ACCEPTED:

By Mark A. Prehtwardt
 Title General Manager
 Date FEB 16, 2010

ATTEST:

By [Signature]
 Title Principal
 Date 2/16/2010

CITY OF RAPID CITY, SOUTH DAKOTA

ACCEPTED:

By _____
 Title Mayor
 Date _____

ATTEST:

By _____
 Title Finance Officer
 Date _____

EXHIBIT A: SCHEDULE OF HOURLY PROFESSIONAL SERVICE BILLING RATES

Schedule of Hourly Professional Service Billing Rates
Digester Control Building Improvements Project – WRF09-1783

Position Classification	Classification Level	Hourly Billing Rate
General Office	5	\$58.00
Technician	6	\$64.00
Assistant	7	\$75.00
	8	\$105.00
	9	\$115.00
Staff	10	\$127.00
	11	\$142.00
Senior	12	\$153.00
	13	\$166.00
Associate	14	\$177.00
	15	\$190.00
Principal	16	\$195.00
	17	\$199.00
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Notes:

1. Position classifications listed above refer to the firm's internal classification system for employee compensation. For example, "Associate", "Senior", etc., refer to such positions as "Associate Engineer", "Senior Architect", etc.
2. For services rendered by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 10%.
3. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt.

EXHIBIT B - SCHEDULE OF REIMBURSABLE EXPENSES

Schedule of Reimbursable Expenses		
Description	Unit Cost	
Personal Mileage:	\$0.50	
Reproduction/Printing:	8.5"x 11" Copies White	\$0.08/sheet
	22" x 34" Drawings White Bond	\$1.68/sheet
	22" x 34" Drawings Mylar	\$5.88/sheet
	8.5"x 11" Copies Color	\$0.70/sheet
	Color Plotting	\$6.00/SF
Long Distance Telephone:	Cost	
Postage:	Cost	
Travel Expenses:		
Airfare:	Cost	
Lodging:	Cost	
Meals:	Cost	
Rental Car:	Cost	
Vehicle Expense:		
Sedan (4-door)	\$58/day + \$0.29/mile	
SUV – 4WD	\$65/day + \$0.35/mile	

Total of billable hours plus reimbursable expenses shall not exceed the maximum Cost Reimbursable Not to Exceed Amount allowed under the contract, without a written amendment executed by the parties.

BURNS & MCDONNELL ENGINEERING COMPANY, INC.**TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**Project: WRF PCB IMPROVEMENTS - CONSTRUCTION PHASEDate of Letter, Proposal or Agreement: 2/16/2010Client: CITY OF RAPID CITY, SOUTH DAKOTA**1. SCOPE OF SERVICES**

For the above-referenced Project, Burns & McDonnell Engineering Company, Inc. ("BMCD") will perform the services set forth in the above-referenced Letter, Proposal or Agreement, in accordance with these Terms and Conditions. BMCD has relied upon the information provided by Client in the preparation of the Proposal, and shall rely on the information provided by or through Client during the execution of this Project as complete and accurate without independent verification.

2. PAYMENTS TO BMCD

A. Compensation will be as stated in the above-referenced Letter, Proposal or Agreement. Statements will be in BMCD's standard format and are payable upon receipt. Time is of the essence in payment of statements, and timely payment is a material part of the consideration of this Agreement. A late payment charge will be added to all amounts not paid within 30 days of statement date and shall be calculated at 1.5 percent per month from statement date. Client shall reimburse any costs incurred by BMCD in collecting any delinquent amount, including reasonable attorney's fees. If a portion of BMCD's statement is disputed, Client shall pay the undisputed portion by the due date. Client shall advise BMCD in writing of the basis for any disputed portion of any statement.

B. Taxes as may be imposed on professional consulting services by state or local authorities shall be in addition to the payment stated in the above-referenced Letter, Proposal or Agreement.

3. INSURANCE

A. During the course of performance of its services, BMCD will maintain Worker's Compensation Insurance with limits as required by statute, Employer's Liability Insurance with limits of \$1,000,000 and Commercial General Liability and Automobile Liability Insurance each with combined single limits of \$1,000,000. *PROFESSIONAL LIABILITY INS. THE AMOUNT OF \$1,000,000.*

B. If the Project involves on-site construction, construction contractors shall be required to provide (or Client may provide) Owner's Protective Liability Insurance naming Client as a Named Insured and BMCD as an Additional Insured or to endorse Client and BMCD using ISO form CG 20 10 11 85 endorsement or its equivalent as Additional Insureds on all construction contractor's liability insurance policies covering claims for personal injuries and property damage in at least the amounts required of BMCD in 3 A above. Construction contractors shall be required to provide certificates evidencing such insurance to Client and BMCD. Contractor's compensation shall include the cost of such insurance including coverage for contractual and indemnification obligations herein.

C. Client and BMCD release each other and waive all rights of subrogation against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of BMCD's services. A provision similar to this shall be incorporated into all construction contracts entered into by Client, and all construction contractors shall be required to provide waivers of subrogation in favor of Client and BMCD for damage covered by any construction contractor's property insurance.

4. INDEMNIFICATION

A. To the extent allowed by law, Client will require all construction contractors to indemnify, defend and hold harmless Client and BMCD from any and all loss where loss is caused or alleged to be caused in whole or in part by the construction contractors, their employees, agents, subcontractors or suppliers.

B. If this Project involves construction and BMCD does not provide consulting services during construction including, but not limited to, on-site monitoring, site visits, site observation, shop drawing review and/or design clarifications, Client agrees to indemnify and hold harmless BMCD from any liability arising from this Project or Agreement, except to the extent caused by BMCD's negligence. *THE CONSTRUCTION ACTIVITIES UNDERTAKEN FOR THIS PROJECT EXCEPT TO THE EXTENT SUCH LIABILITY CAUSED BY BMCD'S NEGLIGENCE.*

BMCD Consulting T&C Denver Rev 0 051104.doc (continued on reverse side)

Client Signature: _____

5. PROFESSIONAL RESPONSIBILITY - LIMITATION OF REMEDIES

A. BMCD will exercise reasonable skill, care and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted professional practices. If BMCD fails to meet the foregoing standard, BMCD will perform at its own cost, the professional services necessary to correct errors and omissions reported to BMCD in writing within one year from the completion of BMCD's services for the Project. No warranty, express or implied, is included in this Agreement or regarding any drawing, specification, or other work product or instrument of service.

~~B. In no event will BMCD be liable for any special, indirect or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, claims by customers of Client or for governmental fines or penalties.~~ *MAV*

C. BMCD's aggregate liability for all damages connected with its services for the Project not excluded by the preceding subparagraph, whether or not covered by BMCD's insurance, will not exceed the greater of \$100,000 or the compensation paid for BMCD's services. *\$1,000,000 OR BMCD'S INSURANCE LIMIT AS STATED IN SECTION 3.* *MAV*

D. These mutually negotiated obligations and remedies stated in this Paragraph 5, Professional Responsibility - Limitation of Remedies, are the sole and exclusive obligations of BMCD and remedies of Client, whether liability of BMCD is based on contract, warranty, strict liability, tort (including negligence), indemnity or otherwise.

6. PERIOD OF SERVICE AND SCHEDULE

The provisions of this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the services stated in the Proposal. BMCD's obligation to render services hereunder will extend for a period, which may reasonably be required for the completion of said services. BMCD shall make reasonable efforts to comply with deliverable schedules (if any) and consistent with BMCD's professional responsibility.

7. COMPUTER PROGRAMS OR MODELS

Any use, development, modification, or integration by BMCD of computer models or programs does not constitute ownership or a license to Client to use or modify such computer models or programs.

8. ELECTRONIC MEDIA AND DATA TRANSMISSIONS

A. Any electronic media (computer disks, tapes, etc.) or data transmissions furnished (including Project Web Sites or CAD file transmissions) are for Client information and convenience only. Such media or transmissions are not to be considered part of BMCD's instruments of service. BMCD, at its option, may remove all indicia of its ownership and involvement from each electronic display.

B. BMCD shall not be liable for loss or damage directly or indirectly, arising out of Client's use of electronic media or data transmissions.

9. DOCUMENTS

A. All documents prepared by BMCD pursuant to this Agreement are instruments of service in respect of the Project specified herein. They are not intended or represented to be suitable for reuse by Client or others in extensions of the Project beyond that now contemplated or on any other Project. Any reuse, extension, or completion by Client or others without written verification, adaptation, and permission by BMCD for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to BMCD.

B. In the event that BMCD is to reuse, copy or adapt all or portions of reports, plans or specifications prepared by others, Client represents that Client either possesses or will obtain permission and necessary rights in copyright, patents or other proprietary rights and will be responsible for any infringement claims by others. Client warrants the completeness, accuracy and efficacy of the information, data, and design provided by or through Client (including prepared for Client by others), for which BMCD shall rely on to perform and complete its services.

10. ESTIMATES, SCHEDULES, FORECASTS, AND PROJECTIONS

Estimates, schedules, forecasts, and projections prepared by BMCD relating to loads, interest rates and other financial analysis parameters, construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are opinions based on BMCD's experience, qualifications and judgment as a professional. Since BMCD has no control over weather, cost and availability of labor, material and equipment, cost of fuel or other utilities, labor productivity, construction contractor's procedures and methods, unavoidable delays, construction contractor's methods of determining prices, economic conditions, government regulations and laws (including the interpretation thereof), competitive bidding or market conditions and other factors affecting such estimates or projections, BMCD does not guarantee that actual rates, costs, quantities, performance, schedules, etc., will not vary significantly from estimates and projections prepared by BMCD.

11. POLLUTION

In view of the uncertainty involved in investigating and recommending solutions to environmental problems and the abnormal degree of risk of claims imposed upon BMCD in performing such services, notwithstanding the responsibility of BMCD set forth in Paragraph 5.A; to the maximum extent allowed by law, Client agrees to release, defend, indemnify and hold harmless BMCD and its officers, directors, employees, agents, consultants and subcontractors from all liability, claims, demands, damages, losses, and expenses, including, but not limited to, claims of Client and other persons and organizations, reasonable fees and expenses of attorneys and consultants, and court costs, except where there has been a final adjudication that the damages were caused by BMCD's willful disregard of its obligations under this Agreement. Such indemnification includes claims arising out of or in any way relating to the actual, alleged, or threatened dispersal, escape, or release of, or failure to detect or contain, chemicals, wastes, liquids, gases or any other material, irritant, contaminant or pollutant.

12. ON-SITE SERVICES

A. Project site visits by BMCD during investigation, observation, construction or equipment installation, or the furnishing of Project representatives shall not make BMCD responsible for construction means, methods, techniques, sequences or procedures; for construction safety precautions or programs; or for any construction contractor(s)' failure to perform its work in accordance with the contract documents.

B. Client shall disclose to BMCD the location and types of any known or suspected toxic, hazardous or chemical materials or wastes existing on or near the premises upon which work is to be performed by BMCD's employees or subcontractors. If any hazardous wastes not identified by Client are discovered after a Project is undertaken, Client and BMCD agree that the scope of services, schedule and compensation may be adjusted accordingly. Client agrees to release BMCD from all damages related to any pre-existing pollutant, contaminant, toxic, or hazardous substance at the site.

13. CHANGES

Client shall have the right to make changes within the general scope of BMCD's services, with an appropriate change in compensation and schedule, upon execution of a mutually acceptable amendment or change order signed by authorized representatives of Client and BMCD.

14. TERMINATION

Services may be terminated by Client or BMCD by seven (7) days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If so terminated, Client shall pay BMCD all amounts due BMCD for all services properly rendered and expenses incurred to the date of receipt of notice of termination, plus reasonable costs incurred by BMCD in terminating the services. In addition, Client may terminate the services for Client's convenience upon payment of twenty percent of the yet unearned and unpaid estimated, lump sum, or not-to-exceed fee, as applicable.

15. DISPUTES, NEGOTIATIONS, MEDIATION

~~A. If a dispute arises relating to the performance of the services to be provided and should that dispute result in litigation, it is agreed that the substantially prevailing party (as determined in equity by the court) shall be entitled to recover all reasonable costs of litigation, including staff time, court costs, attorney's fees and other related expenses.~~ *MAC*

~~B. The parties shall participate in good faith negotiations to resolve any and all disputes. Should negotiations fail, the parties agree to submit to and participate in a third party facilitated mediation as a condition precedent to resolution by litigation. Unless otherwise agreed to, mediation shall be conducted under the rules of the American Arbitration Association.~~ *MAC*

C. Causes of action between the parties shall accrue, and applicable statutes of limitation shall commence to run the date BMCD's services are substantially complete.

16. WITNESS FEES

A. BMCD's employees shall not be retained as expert witnesses, except by separate written agreement.

B. Client agrees to pay BMCD pursuant to BMCD's then current schedule of hourly labor billing rates for time spent by any employee of BMCD responding to any subpoena by any party in any dispute as an occurrence witness or to assemble and produce documents resulting from BMCD's services under this Agreement.

17. CONTROLLING LAW AND VENUE

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of ~~Colorado~~, without regard to any conflicts of law provisions. Parties agree to submit to the exclusive venue and jurisdiction of the ~~18th Judicial District in the County of Douglas, State of Colorado, or the United States District Court for the District of Colorado.~~ *SOUTH DAKOTA, 7th JUDICIAL CIRCUIT, PENNINGTON COUNTY.* *MAC*

18. RIGHTS AND BENEFITS - NO ASSIGNMENT

BMCD's services will be performed solely for the benefit of Client and not for the benefit of any other persons or entities. Neither Client nor BMCD shall assign or transfer interest in this Agreement without the written consent of the other.

19. ENTIRE CONTRACT

These Terms and Conditions and the above-referenced Letter, Proposal or Agreement contain the entire agreement between BMCD and Client relative to BMCD's services for the Project herein. All previous or contemporaneous agreements, representations, promises and conditions relating to BMCD's services for the Project are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event Client issues to BMCD a purchase order, no preprinted terms thereon shall become part of this Agreement. Said purchase order documents, whether or not signed by BMCD, shall be considered only as an internal document of Client to facilitate administrative requirements of Client's operations.

20. SEVERABILITY

Any unenforceable provision herein shall be amended to the extent necessary to make it enforceable; if not possible, it shall be deleted and all other provisions shall remain in full force and affect.

- END -

EXHIBIT C
Burns & McDonnell Engineering Co.
City of Rapid City, South Dakota
Digester Control Building Improvements Project
Professional Engineering Services Fee Estimate
Construction Phase Services

	Principal Engineer Level 15	Construction Services Engineer Level 12	Project Engineer Level 13	Staff Engineer Level 9	Mechanical Engineer Level 12	Electrical Engineer Level 15	Structural Engineer Level 12	Tech/ ACAD Level 9	Office Assistant Level 7	TOTAL HOURS	LABOR	EXPENSES	TOTAL
TASK SERIES 3 - Construction Phase Services													
3.1 Preconstruction Meeting (EE and SE via Conference Call)		2	2	2		1	1			8	\$	1,211	\$ 1,239
3.2 Compliance Submittal Review			20	20	40	16	16		16	128	\$	18,428	\$ 20,046
3.3 Construction Administration Engineering Services	4	0	40	40	12	8	8			112	\$	16,580	\$ 18,023
3.4 Pay Request Review and Recommendations		0	0							0	\$	-	\$ -
3.5 Weekly Construction Progress Meetings (32 via Conference Call)	4	4	32		12	12	0			64	\$	10,800	\$ 11,704
3.6 Construction Services Representative Site Visits (8)		128								128	\$	19,584	\$ 24,032
3.7 As-Constructed Drawings		2	2	4	4	4	4	16		36	\$	4,922	\$ 5,361
3.8 Two-Year Warranty Site Review		0	0							0	\$	-	\$ -
3.9 Conform Contract Documents for Bidding	2		4	4					4	14	\$	1,964	\$ 2,138
Person-hour Subtotal	8	136	100	66	68	41	29	16	16	476	\$	71,525	\$ 82,543
Construction Phase Services Total	8	136	100	66	68	41	29	16	16	476	\$	71,525	\$ 82,543