

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

Date: March 22, 2011

Project Name & Number: Kepps Water Main Extension, Project No. W10-1702

CIP #: 50625

Project Description: To provide construction administration services.

Consultant: CETEC Engineering Services, Inc.

Original Contract Amount: \$79,108.00

Original Contract Date: March 22, 2011

Original Completion Date: 90 Days after Construction Completion

Addendum No:

Amendment Description:

Current Contract Amount: _____

Current Completion Date: _____

Change Requested: _____

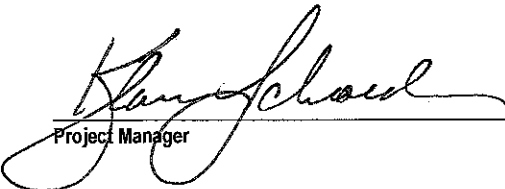
New Contract Amount: _____ \$0.00

New Completion Date: _____

Funding Source This Request:

Amount	Dept.	Line Item	Fund	Comments
\$39,554.00	933	4223	602	
\$39,554.00	934	4223	602	
	Total			

Agreement Review & Approvals


3/9/11

 Project Manager Date

 Division Manager Date

 Compliance Specialist Date

 Department Director 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 City of Rapid City and CETEC Engineering Services, Inc.
for Professional Services for Kepps Water Main Extension
Project No. W08-1702 / CIP No. 50625**

AGREEMENT made March 22, 2011, between the City of Rapid City, SD (City) and CETEC Engineering Services, Inc., (Engineer), located at 1560 Concourse Drive, Rapid City, SD 57703. City intends to obtain construction administration services for Kepps Water Main Extension, Project No. W08-1702, CIP No.50625. The scope of services is as described in Exhibits A and B.

The City and the Engineer agree as follows:

The Engineer shall provide professional engineering services for the City in all phases of the Project as defined in Exhibits A and B, 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. Engineer intends to serve as the City's professional representative for those services as defined in this agreement and to provide advice and consultation to the City as a professional. Any opinions of probable project cost, approvals, and other decisions provided by Engineer for the City are rendered on the basis of experience and qualifications and represent Engineer's professional judgment.
- 1.1.2 All work shall be performed by or under the direct supervision of a professional Engineer licensed to practice in South Dakota.
- 1.1.3 All documents including Drawings and Specifications provided or furnished by Engineer pursuant to this Agreement are instruments of service in respect of the Project and Engineer shall retain an ownership therein. Reuse of any documents pertaining to this project by the City on extensions of this project or on any other project shall be at the City's risk. The City agrees to defend, indemnify, and hold harmless Engineer from all claims, damages, and expenses including attorney's fees arising out of such reuse of the documents by the City or by others acting through the City.



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 Exhibits A and B.)

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 be paid for any authorized, necessary 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 Engineer's 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 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. Engineer will promptly inform the City in writing of such situations so that changes in this agreement can be renegotiated.
- 4.1.11 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. In such case, the Engineer shall be liable to the City for any additional cost to the extent directly resulting from Engineer's action.



- 4.1.12 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. All examinations will be performed at reasonable times, with proper notice. Engineer's documentation will be in a format consistent with general accounting procedures.
- 4.1.13 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.
- 4.1.14 Costs and schedule commitments shall be subject to renegotiation for delays caused by the City's failure to provide specified facilities or information or for delays caused by other parties, excluding subcontractors and subconsultants, predictable 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 of regulations of any governmental agency or any other conditions or circumstances beyond the control of the City or Engineer. Temporary delays of services caused by any of the above which results in additional costs beyond those outlined may require renegotiation of this agreement.
- 4.1.15 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.
- 4.1.16 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.
- 4.1.17 In the event asbestos or toxic materials are encountered 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 Engineer's services, Engineer may, at their option and without liability for consequential or any other damages, suspend performance of services on the project until the City retains



appropriate specialist CONSULTANT(S) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials.

- 4.1.18 This agreement, unless explicitly indicated in writing, shall not be construed as giving Engineer 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.
- 4.1.19 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.
- 4.1.20 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.
- 4.1.21 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**

This section shall be binding on all subcontractors or suppliers.

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.



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 C.)

5.2 Fee

The maximum amount of the fee for the services as detailed in Section 1.2 shall not exceed \$79,108.00 unless the scope of the project is changed as outlined in Section 4. If expenses exceed the maximum amount, the Engineer shall complete the construction administration 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. Prime consultant may not mark up subconsultant or subcontractor services.

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.

Net payment to the Engineer shall be due within forty-five (45) days of receipt by the City.

Section 6—Completion of Services

The Engineer shall complete services on or before 90 days after construction contract is completed.

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. Coverage B-Employer's Liability coverage of not less than \$500,000 each accident, \$500,000 disease-policy limit, and \$500,000 disease-each employee.
- 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—Indemnification

If this project involves construction and Engineer does not provide consulting services during construction including, but not limited to, onsite monitoring, site visits, site observation, shop drawing review and/or design clarifications, City agrees to indemnify and hold harmless Engineer from any liability arising from the construction activities undertaken for this project, except to the extent such liability is caused by Engineer's negligence.

Section 11—Controlling Law and Venue

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of South Dakota, without regard to any conflicts of law provisions. Parties agree to submit to the exclusive venue and jurisdiction of the State of South Dakota, 7th Judicial Circuit, Pennington County.

Section 12—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 effect.

Section 13—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

Greg Wierenga
CETEC ENGINEERING SERVICES, INC.

DATE: _____

DATE: 3-10-11

ATTEST:

FINANCE OFFICER

Reviewed By:

Klare Schroeder 3/9/11
KLARE SCHROEDER, PROJECT MANAGER

DATE: _____

CITY'S DESIGNATED PROJECT REPRESENTATIVE:

ENGINEERING FIRM'S DESIGNATED PROJECT REPRESENTATIVE:

Klare Schroeder
Name

Greg Wierenga
Name

605-394-4154 klare.schroeder@rcgov.org
Phone Number Email

341-7800 gregw@ce
Phone Number Email eng...-...-1
com



CONSTRUCTION PERIOD SERVICES
for Kepps Water Main Extension
Project No. W10-1702
CIP 50625
CETEC Engineering Services, Inc.
TASK SCHEDULE
February 21, 2011

TASK 4 - BASIC CONSTRUCTION SERVICES		Task Cost
4.2	Conduct Preconstruction Conference including Agenda	\$ 1,000.00
4.5	Review and take action on shop drawings, submittals, test results, etc.	\$ 1,212.00
4.6	Prepare As-Built plans and specifications.	\$ 2,414.00
	Supplies, Mileage, printing allowances	\$ 330.00
	Subtotal / Basic Construction Services	\$ 4,956.00

TASK 5 - EXPANDED CONSTRUCTION SERVICES		Task Cost
5.2	Property Owner Notification	\$ 1,356.00
5.3	Progress Meetings and Minutes	\$ 3,940.00
5.4	Construction Observation	\$ 58,332.00
5.5	Daily Reports	\$ -
5.6	Stormwater Inspections and Reports	\$ 296.00
5.7	Soil Compaction Testing (ATS Subcontract)	\$ 3,540.00
5.8	Assurance Testing	\$ 212.00
5.9	Monthly Pay Request Preparation	\$ 1,144.00
5.10	Change Order Preparation	\$ 1,152.00
5.11	Punch List Preparation	\$ 932.00
5.12	Construction Closeout Checklist	\$ 890.00
5.13	Certification of Project Completion	\$ 890.00
5.14	Notification of Project Completion to SDDENR	\$ 148.00
	Supplies, Mileage, Miscellaneous	\$ 1,320.00
	Subtotal / Basic Construction Services	\$ 74,152.00

TOTAL ESTIMATED FEES - CONSTRUCTION PERIOD SERVICES	\$ 79,108.00
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EXHIBIT A

Scope of Services

4. BASIC CONSTRUCTION SERVICES

- 4.1 Notice to Proceed preparation.
- 4.2 Preconstruction Conference (agenda and minutes in City format)
- 4.3 Written Clarification in Response to Plans and Specifications questions
- 4.4 Recommendations for Changed and Unknown Conditions on Construction
- 4.5 Shop drawing, Submittal and Test Results Reviews and Action
- 4.6 As-Built Plans and Specifications Preparation

5. EXPANDED CONSTRUCTION SERVICES

- 5.1 Public Service Announcement Preparation
- 5.2 Property Owner notification as needed.
- 5.3 Progress Meetings and Minutes
- 5.4 Provide Daily Construction Observation
- 5.5 Daily Reports
- 5.6 Storm water Inspections and Reports
- 5.7 Soil Compaction Testing
- 5.8 Assurance Testing according to Standard Specifications
- 5.9 Monthly Pay Request Preparation and Submittal to City Project Manager
- 5.10 Change Order Preparation
- 5.11 Punch List Preparation
- 5.12 Construction Closeout Checklist
- 5.13 Certification of Project Completion
- 5.14 Notification of Project Completion to SDDENR

EXHIBIT B**Scope of Services**

Construction Phase Consultant shall:

1. Consult with Client and act as Client's representative as provided in Section 1. The extent and limitations of the duties, responsibilities, and authority of Consultant as assigned in the Agreement shall not be modified, except as Consultant may otherwise agree in writing. All of Client's instructions to Contractor will be issued through Consultant, which shall have authority to act on behalf of Client in dealings with Contractor to the extent provided in this Agreement, except as otherwise provided in writing.
2. Provide the services of a Resident Project Representative (RPR) at the site to assist the Consultant and to provide more extensive observation of Contractor's work. .
3. Conduct a Preconstruction Conference prior to commencement of Work at the site.
4. Receive, review and determine the acceptability of any and all schedules that Contractor is required to submit to Consultant, including the Progress Schedule, Schedule of Submittals and Schedule of Values.
5. Make visits to the Site at intervals appropriate to the various stages of construction, as Consultant deems necessary, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Consultant, and the RPR, 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 Consultant 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 Consultant's exercise of professional judgment as assisted by the RPR, if any. Based on information obtained during such visits and observations, Consultant will determine in general if the Work is proceeding in accordance with the Contract Documents, and Consultant shall keep Client informed of the progress of the Work.
 - a. The purpose of Consultant's visits to, and representation by the RPR, if any, at the Site, will be to enable Consultant to better carry out the duties and responsibilities assigned to an undertaken by Consultant during the Construction Phase, and, in addition, by the exercise of Consultant's efforts as an experienced and qualified design professional, to provide for Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Consultant 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 Consultant have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to the Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant 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.
6. Have the authority to recommend to Client that Contractor's Work be rejected while it is in progress if, on the basis of Consultant's observations, Consultant believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
7. 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

Consultant 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 Client free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between Client and Contractor that might affect the amount that should be paid.

14. The Consultant, RPR and subconsultants will perform quality control testing of materials during the construction in accordance with the requirements and frequencies set forth in the construction documents and the latest edition of the City of Rapid City Standard Specifications for Public Works Construction.
15. Receive, review and transmit maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and the amend record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.
16. Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, the Consultant will, in company with Client and Contractor, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of Client, Consultant considers the Work substantially complete, Consultant shall deliver a certificate of Substantial Completion to Client and Contractor.
17. Promptly after notice from Contractor that the Work is complete, the Consultant will, in company with Client and Contractor, conduct an inspection to determine if the Work is complete. Consultant shall deliver a certificate of final Completion to Client and Contractor, including the date for the start of the warranty period.
18. The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Consultant for final payment to Contractors.
19. Shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers or other individuals or entities performing or furnishing any of the Work. Consultant shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

EXHIBIT C**Labor Rate Schedule - 2011**

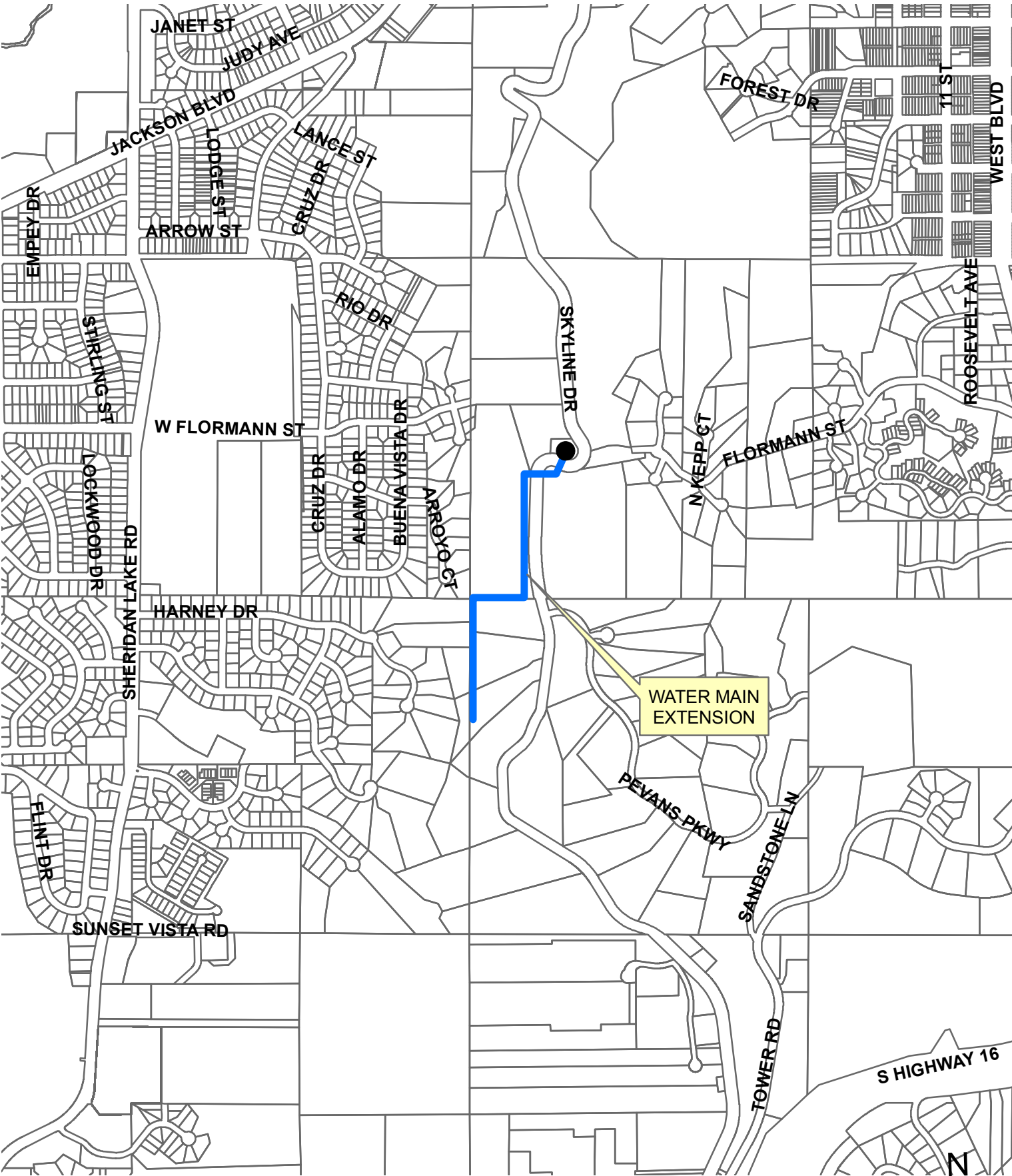
2011 Labor Rates

Principal.....	\$106.00/hr.
Project Manager.....	\$106.00/hr.
Project Engineer.....	\$80.00/hr.
Survey Crew Chief, RLS.....	\$66.00/hr.
Field Manager/Construction Observer.....	\$70.00/hr.
Construction Observer/Technician.....	\$58.00/hr.
Survey Party Chief/Technician.....	\$66.00/hr.
Senior Engineering Technician.....	\$66.00/hr.
CADD Manager.....	\$68.00/hr.
Survey Assistant.....	\$44.00/hr.
Clerical.....	\$42.00/hr.

Reimbursable Expenses

Project Travel.....	\$0.60/mile
Telephone, Perdiem.....	Non-Reimbursable
Blueline Printing.....	Actual Cost plus 10 percent
Outside Printing.....	Actual Cost
Subconsultants.....	Actual Cost

EXHIBIT "A"



KEPPS WATER MAIN EXTENSION
PROJECT NO. W08-1702 **CIP NO. 50625**

