

**Agreement Between City of Rapid City and Ferber Engineering Company Inc.
for Construction Professional Services for West Boulevard Sanitary Sewer
Reconstruction, Project No. 11-1961 / CIP No. 50794**

AGREEMENT made _____, 20____, between the City of Rapid City, SD (City) and Ferber Engineering Company Inc., (Engineer), located at 729 Watertown St., Rapid City, SD 57701. City intends to obtain services for West Boulevard Sanitary Sewer, Project No. 11-1961, CIP No. 50794. 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 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 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 sub-contractors and sub-consultants, 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 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

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 C.)



5.2 Fee

The maximum amount of the fee for the services as detailed in Section 1.2 shall not exceed \$53,132.00 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. Prime consultant may not mark up sub-consultant or sub-contractor 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 December 1, 2013 based on an award date of December 3, 2012.

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, of not less than \$1,000,000 each occurrence and not less than \$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

FERBER ENGINEERING COMPANY INC.

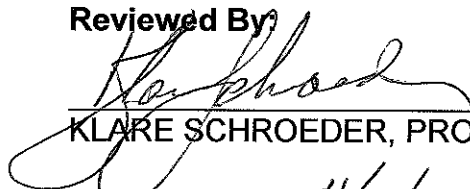
DATE: _____

DATE: _____

ATTEST:

FINANCE OFFICER

Reviewed By:



KLARE SCHROEDER, PROJECT MANAGER

DATE: 11/21/12

**CITY'S DESIGNATED PROJECT
REPRESENTATIVE**

**ENGINEERING FIRM'S DESIGNATED
PROJECT REPRESENTATIVE**

NAME Klare Schroeder, P.E.
PHONE 605-394-4154
EMAIL klare.schroeder@rcgov.org

NAME Dave Muck
PHONE 605-343-3311
EMAIL davemuck@ferberengineering.com



**WEST BOULEVARD SANITARY SEWER RECONSTRUCTION
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EXHIBIT A

The City has determined the need to procure construction related services for the West Boulevard Sanitary Sewer Reconstruction Project. Ferber Engineering Company, Inc. and the City have previously entered into an agreement for Preliminary Design Services, Final Design Services and Bidding Services, for the Project.

The Scope of Work Tasks 4 through 5 presented in this Exhibit are "Standard" Construction Related Services tasks, requested by the City. Tasks 1 through 3 are "Standard" design tasks and are being completed by the Engineer under the original agreement.

Exhibit D, attached, outlines the role and responsibilities of the Engineer's Resident Project Representative.

TASK 4 – BASIC CONSTRUCTION SERVICES:

- 4.1 Prepare Notice to Proceed for City of Rapid City project manager signature and distribution to contractor for execution.
- 4.2 Conduct a Pre-Construction Conference including agenda. Record minutes and distribute to all attendees.
- 4.3 Provide written clarification regarding drawing and specification questions.
- 4.4 Provide recommendations to address changed or unknown conditions that may appear during construction.
- 4.5 Review and take action on shop drawings, product submittals, test results, and other submittals.
- 4.6 Prepare "As-Constructed" plans and specifications. "As-Constructed" plans and specifications shall be submitted as a hard copy and on CD compatible with current AutoCAD Release. In the event that the City did not issue a "Notice to Proceed" for Task 5 services, then the City shall forward construction record documents for preparing the "As-Constructed" plans and specifications.

TASK 5 – EXPANDED CONSTRUCTION SERVICES:

- 5.1 Mark removal limits of appropriate items as necessary to revise according to Engineer's recommendations.
- 5.2 Review Public Service Announcements (P.S.A.'s) submitted by contractor for Engineering Services. Engineering Services will be responsible for distribution to all local media. Copies of P.S.A.'s shall be distributed one week prior to start of work or change in operations that may significantly affect the public.
- 5.3 Assist contractor in determining affected landowners at various times throughout project. Contractor shall be responsible for notification of residents/landowners.
- 5.4 Conduct appropriate progress meetings. Record minutes and distribute to all attendees.
- 5.5 Provide daily on-site observation to assure that the methods and materials used by the contractor meet the intent of the plans and specifications. For buried installations such as for sewer and water mains the Consultant shall be on site all of the time the Contractor is installing these buried installations.

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- 5.6 Prepare daily reports. A daily record of activity will be maintained by the inspector including weather conditions, construction progress, deviations from the plans and specifications, work performed, quantities installed and any other pertinent information. Such information shall be neatly and concisely entered into the City of Rapid City Project Inspector's Diary and Inspection quantity book. Submit detachable copies to Engineering Services on a weekly basis.
 - 5.7 Perform stormwater inspections, prepare reports, and assist in keeping the erosion and sediment control plans current as required by the ordinance regulating construction site runoff control, Chapter 8.46, the Stormwater Quality Manual and the Standard or Detailed Specifications.
 - 5.8 Engineer will provide the following testing through Subconsultant contract:
 - 5.8.1 Soil Compaction Testing Subconsultant will provide:
 - 5.8.1.1 AASHTO T-180 tests per standard specification,
 - 5.8.1.2 Provide field density testing as outlined in the Standard Specifications.
 - 5.9 Provide assurance testing (or witness Contractor testing) according to the Standard Specifications. All test results shall be submitted to the City of Rapid City within 30 days of project completion.
 - 5.10 Prepare and submit to City for quantities installed and/or stored materials to date.
 - 5.11 Prepare change orders, and extra work orders for contractor on City of Rapid City forms and make recommendations for their approval or denial.
 - 5.12 Prepare and submit project completion punch list items to the Contractor and Engineering Services and oversee its completion.
 - 5.13 Prepare and submit City of Rapid City project "Construction Project Close-out Checklist" indicating compliance with Standard Specifications and acceptance of the various infrastructure components. The Consultant is responsible for coordinating completion of the checklist items with the Contractor.
 - 5.14 Prepare letter of certification of project completion and start of warranty period.
 - 5.15 Prepare a letter to SDDENR notifying them of project completion.
 - 5.16 Verify Contractor's two-year Warranty Surety is provided to the City of Rapid City, either within the performance bond or as a separate bond.

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EXHIBIT B

Task #	Description	Subtask Total
4.1	<i>Prepare Notice-to-Proceed for City PM</i>	\$115.00
4.2	<i>Pre-Construction Conference</i>	\$430.00
4.3	<i>Drawing/Specification Clarification</i>	\$1,460.00
4.4	<i>Change Recommendations</i>	\$1,520.00
4.5	<i>Shop Drawing Review</i>	\$2,000.00
4.6	<i>Record Drawings</i>	\$2,525.00
	TASK 4 TOTAL	\$8,050.00
5.1-5.3, 5.5-5.7 & 5.9	<i>Resident Project Representative</i>	\$30,813.00
5.4	<i>Progress Meetings</i>	\$2,500.00
5.8	<i>Soils Testing</i>	\$7,399.00
5.10	<i>Quantities and Pay Requests</i>	\$830.00
5.11	<i>Change Orders</i>	\$1,520.00
5.12	<i>Final Walk Through and Punchlist</i>	\$1,010.00
5.13-5.16	<i>Contract Closeout</i>	\$1,010.00
	TASK 5 TOTAL	\$45,082.00
	CONTRACT TOTAL FOR TASKS 4-5	\$53,132.00

**WEST BOULEVARD SANITARY SEWER RECONSTRUCTION
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EXHIBIT C

SCHEDULE OF CHARGES

FERBER ENGINEERING COMPANY, INC.

<u>EMPLOYEE CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal Professional Engineer	\$115.00
Principal Professional Engineer / Land Surveyor	\$115.00
Professional Engineer II	\$85.00
GIS Professional	\$85.00
Professional Engineer I	\$75.00
Graduate Engineer	\$70.00
Senior Technician	\$75.00
Technician II	\$60.00
Technician I	\$55.00
Drafter	\$60.00
Clerical	\$65.00

AMERICAN ENGINEERING TESTING, INC.

<u>EMPLOYEE CLASSIFICATION</u>	<u>HOURLY RATE</u>
Senior Geotechnical Engineer	\$130.00
Geotechnical Engineer	\$90.00
Materials Engineer	\$85.00
Senior Field Technician	\$70.00
Draft Person	\$65.00
Field Technician	\$55.00
Clerical	\$42.00
2-Man Drill Crew & CME 75 Rig	\$185.00

**WEST BOULEVARD SANITARY SEWER RECONSTRUCTION
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EXHIBIT D

RESIDENT PROJECT REPRESENTATIVE

1. **FERBER ENGINEER COMPANY, INC. (ENGINEER)** shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist **ENGINEER** in observing progress and quality of the Work. The RPR, assistants and other field staff under this Exhibit D shall provide full time representation unless waived by **City of Rapid City (OWNER)**.
2. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, **ENGINEER** shall endeavor to provide further protection for **OWNER** against defects and deficiencies in the Work. However, **ENGINEER** shall not, during such visits or as a result of such observations of Contractor's work in progress supervise, direct, or have control over Contractor's work nor shall **ENGINEER** have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by Contractor, for safety precautions and programs incident to the Work, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Exhibit A are applicable.
3. The duties and responsibilities of the RPR are limited to those of **ENGINEER** in **ENGINEER'S** Agreement with the **OWNER** and in the construction documents, and are further limited and described as follows:
 - 3.1. RPR is **ENGINEER'S** agent at the Site, will act as directed by and under the supervision of **ENGINEER**, and will confer with **ENGINEER** regarding RPR'S actions. RPR'S dealings in matters pertaining to the Contractor's work in progress shall in general be with **ENGINEER** and Contractor, keeping **OWNER** advised. RPR'S dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with **OWNER** with the knowledge of and under the direction of **ENGINEER**.
 - 3.2. Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with **ENGINEER** concerning acceptability.
 - 3.3. 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.
 - 3.4. Serve as **ENGINEER'S** liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist **ENGINEER** in serving as **OWNER'S** liaison with Contractor when Contractor's operations affect **OWNER'S** on-site operations.
 - 3.5. Assist in obtaining from **OWNER** additional details or information, when required for proper execution of the Work.

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- 3.6. Report to **ENGINEER** when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by **ENGINEER**.
- 3.7. Record date of receipt of approved Shop Drawings and Samples.
- 3.8. Receive Samples which are furnished at the Site by Contractor and notify **ENGINEER** of availability of Samples for examination.
- 3.9. Advise **ENGINEER**, **OWNER**, and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample for which **RPR** believes that the submittal has not been approved by **ENGINEER**.
- 3.10. Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with **RPR'S** recommendations to **ENGINEER** and **OWNER**. Transmit to **OWNER** and Contractor in writing decisions as issued by **ENGINEER**.
- 3.11. Conduct on-site observations of Contractor's work in progress to assist **ENGINEER** in determining if the Work is, in general, proceeding in accordance with the Contract Documents.
- 3.12. Report to **ENGINEER** whenever **RPR** believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged or does not meet the requirements of any inspection, test or approval required to be made; and advise **ENGINEER** and **OWNER** of that part of Contractor's work in progress that **RPR** believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 3.13. Verify that tests, equipment, and system start-ups and operating and maintenance training are conducted in the presence of appropriate details relative to the test procedures and startups.
- 3.14. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to **ENGINEER**.
- 3.15. Consult with **ENGINEER** in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 3.16. Verify that tests, equipment, and system start-ups and operating and maintenance training are conducted in the presence of appropriate **OWNER'S** personnel, and that Contractor maintains adequate records thereof.
- 3.17. Observe, record, and report to **ENGINEER** and **OWNER** appropriate details relative to the test procedures and systems startups.
- 3.18. Maintain at the Job Site or Permanent Office orderly files for correspondence, reports of job conferences, 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, **ENGINEER'S** clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor and other Project related documents.
- 3.19. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed condition, Site visitors, daily activities,

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- decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to **ENGINEER** and **OWNER**.
- 3.20. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
 - 3.21. Maintain records for use in preparing Project documentation.
 - 3.22. Upon completion of construction furnish original set of all RPR Project documentation to **ENGINEER** and **OWNER**.
 - 3.23. Furnish to **ENGINEER** and **OWNER** periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - 3.24. Draft and recommend to **ENGINEER** and **OWNER** proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - 3.25. Furnish to **ENGINEER** and **OWNER** copies of all inspection, test, and system startup reports.
 - 3.26. Report immediately to **ENGINEER** and **OWNER** the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.
 - 3.27. Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to **ENGINEER**, 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.
 - 3.28. During the course of the Work, verify that material and equipment certifications, maintenance and operation manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to **ENGINEER** for review and forwarding to **OWNER** prior to payment for that part of the Work.
 - 3.29. Before **OWNER** issues a Certificate of Project Completion, submit to Contractor a list of observed items requiring completion or correction.
 - 3.30. Observe whether Contractor has had performed inspections required by Laws and Regulations applicable to the Work, including but not limited to, those to be performed by public agencies having jurisdiction over the Work.
 - 3.31. Participate in a final inspection in the company of **ENGINEER**, **OWNER**, and Contractor and prepare a final list of items to be completed or corrected.
 - 3.32. Observe whether all items on final list have been completed or corrected and make recommendations to **ENGINEER** concerning acceptance and issuance of the Notice of Acceptability of the Work.
4. Resident Project Representative shall not:
- 4.1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items) unless authorized by **ENGINEER** and **OWNER**.
 - 4.2. Exceed limitations of **ENGINEER'S** authority as set forth in the Agreement or the Contract Documents.
 - 4.3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.

**WEST BOULEVARD SANITARY SEWER RECONSTRUCTION
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- 4.4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
- 4.5. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the activities or operations of **OWNER** or Contractor.
- 4.6. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 4.7. Authorize **OWNER** to occupy the Project in whole or in part.
- 4.8. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by **ENGINEER**.

**Agreement Between City of Rapid City and Ferber Engineering Company Inc.
for Construction Professional Services for West Boulevard Sanitary Sewer
Reconstruction, Project No. 11-1961 / CIP No. 50794**

AGREEMENT made _____, 20____, between the City of Rapid City, SD (City) and Ferber Engineering Company Inc., (Engineer), located at 729 Watertown St., Rapid City, SD 57701. City intends to obtain services for West Boulevard Sanitary Sewer, Project No. 11-1961, CIP No. 50794. 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 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 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 sub-contractors and sub-consultants, 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 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

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 C.)



5.2 Fee

The maximum amount of the fee for the services as detailed in Section 1.2 shall not exceed \$53,132.00 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. Prime consultant may not mark up sub-consultant or sub-contractor 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 December 1, 2013 based on an award date of December 3, 2012.

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, of not less than \$1,000,000 each occurrence and not less than \$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

FERBER ENGINEERING COMPANY INC.

DATE: _____

DATE: _____

ATTEST:

FINANCE OFFICER

Reviewed By:



KLARE SCHROEDER, PROJECT MANAGER

DATE: 11/21/12

**CITY'S DESIGNATED PROJECT
REPRESENTATIVE**

**ENGINEERING FIRM'S DESIGNATED
PROJECT REPRESENTATIVE**

NAME Klare Schroeder, P.E.
PHONE 605-394-4154
EMAIL klare.schroeder@rcgov.org

NAME Dave Muck
PHONE 605-343-3311
EMAIL dave@muck@ferberengineering.com



**WEST BOULEVARD SANITARY SEWER RECONSTRUCTION
PROJECT NO. 11-1961 / CIP 50794**

EXHIBIT A

The City has determined the need to procure construction related services for the West Boulevard Sanitary Sewer Reconstruction Project. Ferber Engineering Company, Inc. and the City have previously entered into an agreement for Preliminary Design Services, Final Design Services and Bidding Services, for the Project.

The Scope of Work Tasks 4 through 5 presented in this Exhibit are "Standard" Construction Related Services tasks, requested by the City. Tasks 1 through 3 are "Standard" design tasks and are being completed by the Engineer under the original agreement.

Exhibit D, attached, outlines the role and responsibilities of the Engineer's Resident Project Representative.

TASK 4 – BASIC CONSTRUCTION SERVICES:

- 4.1 Prepare Notice to Proceed for City of Rapid City project manager signature and distribution to contractor for execution.
- 4.2 Conduct a Pre-Construction Conference including agenda. Record minutes and distribute to all attendees.
- 4.3 Provide written clarification regarding drawing and specification questions.
- 4.4 Provide recommendations to address changed or unknown conditions that may appear during construction.
- 4.5 Review and take action on shop drawings, product submittals, test results, and other submittals.
- 4.6 Prepare "As-Constructed" plans and specifications. "As-Constructed" plans and specifications shall be submitted as a hard copy and on CD compatible with current AutoCAD Release. In the event that the City did not issue a "Notice to Proceed" for Task 5 services, then the City shall forward construction record documents for preparing the "As-Constructed" plans and specifications.

TASK 5 – EXPANDED CONSTRUCTION SERVICES:

- 5.1 Mark removal limits of appropriate items as necessary to revise according to Engineer's recommendations.
- 5.2 Review Public Service Announcements (P.S.A.'s) submitted by contractor for Engineering Services. Engineering Services will be responsible for distribution to all local media. Copies of P.S.A.'s shall be distributed one week prior to start of work or change in operations that may significantly affect the public.
- 5.3 Assist contractor in determining affected landowners at various times throughout project. Contractor shall be responsible for notification of residents/landowners.
- 5.4 Conduct appropriate progress meetings. Record minutes and distribute to all attendees.
- 5.5 Provide daily on-site observation to assure that the methods and materials used by the contractor meet the intent of the plans and specifications. For buried installations such as for sewer and water mains the Consultant shall be on site all of the time the Contractor is installing these buried installations.

**WEST BOULEVARD SANITARY SEWER RECONSTRUCTION
PROJECT NO. 11-1961 / CIP 50794**

- 5.6 Prepare daily reports. A daily record of activity will be maintained by the inspector including weather conditions, construction progress, deviations from the plans and specifications, work performed, quantities installed and any other pertinent information. Such information shall be neatly and concisely entered into the City of Rapid City Project Inspector's Diary and Inspection quantity book. Submit detachable copies to Engineering Services on a weekly basis.
- 5.7 Perform stormwater inspections, prepare reports, and assist in keeping the erosion and sediment control plans current as required by the ordinance regulating construction site runoff control, Chapter 8.46, the Stormwater Quality Manual and the Standard or Detailed Specifications.
- 5.8 Engineer will provide the following testing through Subconsultant contract:
 - 5.8.1 Soil Compaction Testing Subconsultant will provide:
 - 5.8.1.1 AASHTO T-180 tests per standard specification,
 - 5.8.1.2 Provide field density testing as outlined in the Standard Specifications.
- 5.9 Provide assurance testing (or witness Contractor testing) according to the Standard Specifications. All test results shall be submitted to the City of Rapid City within 30 days of project completion.
- 5.10 Prepare and submit to City for quantities installed and/or stored materials to date.
- 5.11 Prepare change orders, and extra work orders for contractor on City of Rapid City forms and make recommendations for their approval or denial.
- 5.12 Prepare and submit project completion punch list items to the Contractor and Engineering Services and oversee its completion.
- 5.13 Prepare and submit City of Rapid City project "Construction Project Close-out Checklist" indicating compliance with Standard Specifications and acceptance of the various infrastructure components. The Consultant is responsible for coordinating completion of the checklist items with the Contractor.
- 5.14 Prepare letter of certification of project completion and start of warranty period.
- 5.15 Prepare a letter to SDDENR notifying them of project completion.
- 5.16 Verify Contractor's two-year Warranty Surety is provided to the City of Rapid City, either within the performance bond or as a separate bond.

**WEST BOULEVARD SANITARY SEWER RECONSTRUCTION
PROJECT NO. 11-1961 / CIP 50794**

EXHIBIT B

Task #	Description	Subtask Total
4.1	Prepare Notice-to-Proceed for City PM	\$115.00
4.2	Pre-Construction Conference	\$430.00
4.3	Drawing/Specification Clarification	\$1,460.00
4.4	Change Recommendations	\$1,520.00
4.5	Shop Drawing Review	\$2,000.00
4.6	Record Drawings	\$2,525.00
TASK 4 TOTAL		\$8,050.00
5.1-5.3, 5.5-5.7 & 5.9	Resident Project Representative	\$30,813.00
5.4	Progress Meetings	\$2,500.00
5.8	Soils Testing	\$7,399.00
5.10	Quantities and Pay Requests	\$830.00
5.11	Change Orders	\$1,520.00
5.12	Final Walk Through and Punchlist	\$1,010.00
5.13-5.16	Contract Closeout	\$1,010.00
TASK 5 TOTAL		\$45,082.00
CONTRACT TOTAL FOR TASKS 4-5		\$53,132.00

**WEST BOULEVARD SANITARY SEWER RECONSTRUCTION
PROJECT NO. 11-1961 / CIP 50794**

EXHIBIT C

SCHEDULE OF CHARGES

FERBER ENGINEERING COMPANY, INC.

<u>EMPLOYEE CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal Professional Engineer	\$115.00
Principal Professional Engineer / Land Surveyor	\$115.00
Professional Engineer II	\$85.00
GIS Professional	\$85.00
Professional Engineer I	\$75.00
Graduate Engineer	\$70.00
Senior Technician	\$75.00
Technician II	\$60.00
Technician I	\$55.00
Drafter	\$60.00
Clerical	\$65.00

AMERICAN ENGINEERING TESTING, INC.

<u>EMPLOYEE CLASSIFICATION</u>	<u>HOURLY RATE</u>
Senior Geotechnical Engineer	\$130.00
Geotechnical Engineer	\$90.00
Materials Engineer	\$85.00
Senior Field Technician	\$70.00
Draft Person	\$65.00
Field Technician	\$55.00
Clerical	\$42.00
2-Man Drill Crew & CME 75 Rig	\$185.00

**WEST BOULEVARD SANITARY SEWER RECONSTRUCTION
PROJECT NO. 11-1961 / CIP 50794**

EXHIBIT D

RESIDENT PROJECT REPRESENTATIVE

1. **FERBER ENGINEER COMPANY, INC. (ENGINEER)** shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist **ENGINEER** in observing progress and quality of the Work. The RPR, assistants and other field staff under this Exhibit D shall provide full time representation unless waived by **City of Rapid City (OWNER)**.
2. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, **ENGINEER** shall endeavor to provide further protection for **OWNER** against defects and deficiencies in the Work. However, **ENGINEER** shall not, during such visits or as a result of such observations of Contractor's work in progress supervise, direct, or have control over Contractor's work nor shall **ENGINEER** have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by Contractor, for safety precautions and programs incident to the Work, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Exhibit A are applicable.
3. The duties and responsibilities of the RPR are limited to those of **ENGINEER** in **ENGINEER'S** Agreement with the **OWNER** and in the construction documents, and are further limited and described as follows:
 - 3.1. RPR is **ENGINEER'S** agent at the Site, will act as directed by and under the supervision of **ENGINEER**, and will confer with **ENGINEER** regarding RPR'S actions. RPR'S dealings in matters pertaining to the Contractor's work in progress shall in general be with **ENGINEER** and Contractor, keeping **OWNER** advised. RPR'S dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with **OWNER** with the knowledge of and under the direction of **ENGINEER**.
 - 3.2. Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with **ENGINEER** concerning acceptability.
 - 3.3. 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.
 - 3.4. Serve as **ENGINEER'S** liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist **ENGINEER** in serving as **OWNER'S** liaison with Contractor when Contractor's operations affect **OWNER'S** on-site operations.
 - 3.5. Assist in obtaining from **OWNER** additional details or information, when required for proper execution of the Work.

**WEST BOULEVARD SANITARY SEWER RECONSTRUCTION
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- 3.6. Report to **ENGINEER** when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by **ENGINEER**.
- 3.7. Record date of receipt of approved Shop Drawings and Samples.
- 3.8. Receive Samples which are furnished at the Site by Contractor and notify **ENGINEER** of availability of Samples for examination.
- 3.9. Advise **ENGINEER**, **OWNER**, and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample for which **RPR** believes that the submittal has not been approved by **ENGINEER**.
- 3.10. Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with **RPR**'S recommendations to **ENGINEER** and **OWNER**. Transmit to **OWNER** and Contractor in writing decisions as issued by **ENGINEER**.
- 3.11. Conduct on-site observations of Contractor's work in progress to assist **ENGINEER** in determining if the Work is, in general, proceeding in accordance with the Contract Documents.
- 3.12. Report to **ENGINEER** whenever **RPR** believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged or does not meet the requirements of any inspection, test or approval required to be made; and advise **ENGINEER** and **OWNER** of that part of Contractor's work in progress that **RPR** believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 3.13. Verify that tests, equipment, and system start-ups and operating and maintenance training are conducted in the presence of appropriate details relative to the test procedures and startups.
- 3.14. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to **ENGINEER**.
- 3.15. Consult with **ENGINEER** in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 3.16. Verify that tests, equipment, and system start-ups and operating and maintenance training are conducted in the presence of appropriate **OWNER'S** personnel, and that Contractor maintains adequate records thereof.
- 3.17. Observe, record, and report to **ENGINEER** and **OWNER** appropriate details relative to the test procedures and systems startups.
- 3.18. Maintain at the Job Site or Permanent Office orderly files for correspondence, reports of job conferences, 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, **ENGINEER'S** clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor and other Project related documents.
- 3.19. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed condition, Site visitors, daily activities,



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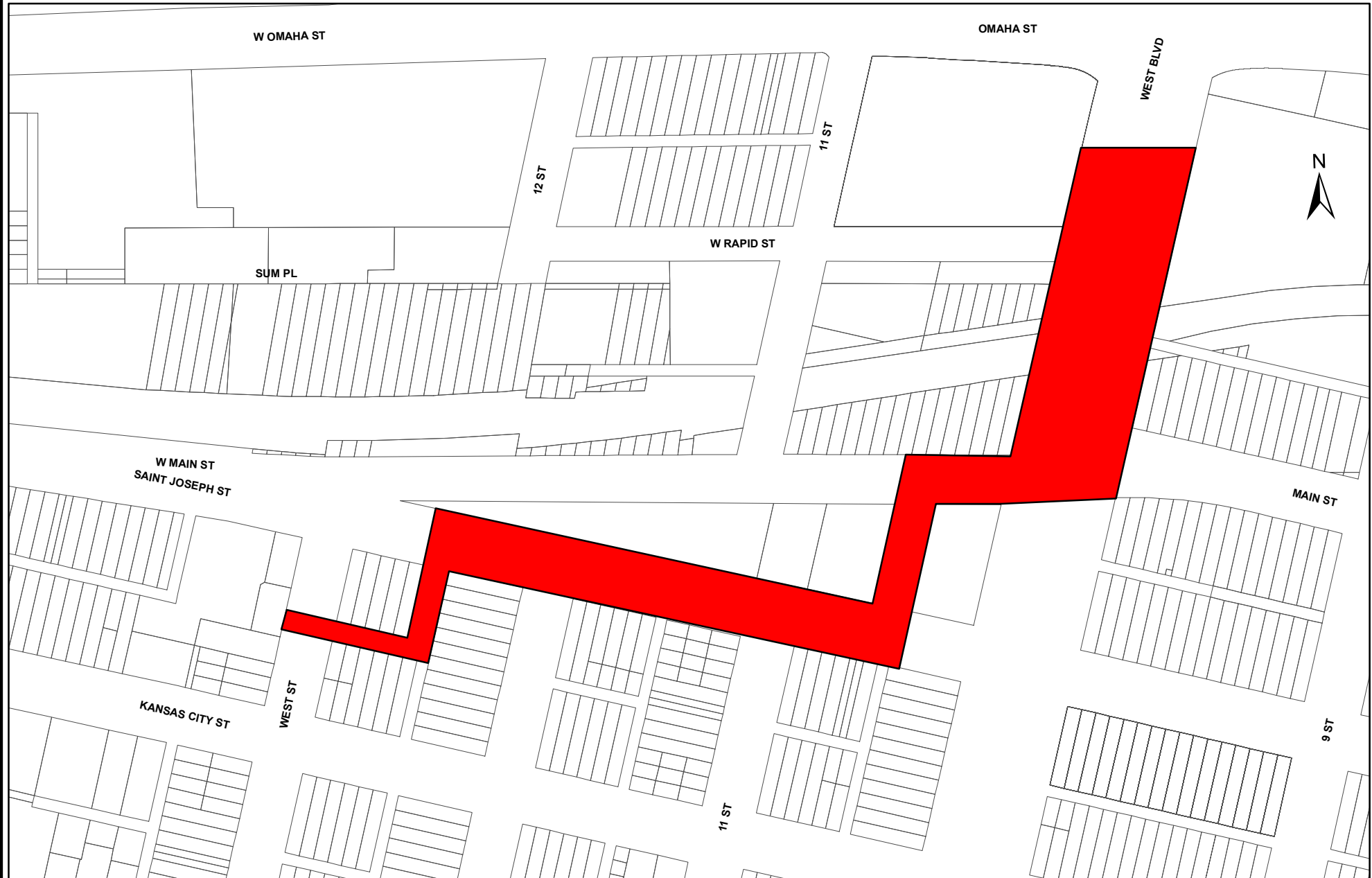
- decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to **ENGINEER** and **OWNER**.
- 3.20. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.
 - 3.21. Maintain records for use in preparing Project documentation.
 - 3.22. Upon completion of construction furnish original set of all RPR Project documentation to **ENGINEER** and **OWNER**.
 - 3.23. Furnish to **ENGINEER** and **OWNER** periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - 3.24. Draft and recommend to **ENGINEER** and **OWNER** proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - 3.25. Furnish to **ENGINEER** and **OWNER** copies of all inspection, test, and system startup reports.
 - 3.26. Report immediately to **ENGINEER** and **OWNER** the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.
 - 3.27. Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to **ENGINEER**, 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.
 - 3.28. During the course of the Work, verify that material and equipment certifications, maintenance and operation manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to **ENGINEER** for review and forwarding to **OWNER** prior to payment for that part of the Work.
 - 3.29. Before **OWNER** issues a Certificate of Project Completion, submit to Contractor a list of observed items requiring completion or correction.
 - 3.30. Observe whether Contractor has had performed inspections required by Laws and Regulations applicable to the Work, including but not limited to, those to be performed by public agencies having jurisdiction over the Work.
 - 3.31. Participate in a final inspection in the company of **ENGINEER**, **OWNER**, and Contractor and prepare a final list of items to be completed or corrected.
 - 3.32. Observe whether all items on final list have been completed or corrected and make recommendations to **ENGINEER** concerning acceptance and issuance of the Notice of Acceptability of the Work.
4. Resident Project Representative shall not:
- 4.1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items) unless authorized by **ENGINEER** and **OWNER**.
 - 4.2. Exceed limitations of **ENGINEER'S** authority as set forth in the Agreement or the Contract Documents.
 - 4.3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.



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- 4.4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
- 4.5. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the activities or operations of **OWNER** or Contractor.
- 4.6. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 4.7. Authorize **OWNER** to occupy the Project in whole or in part.
- 4.8. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by **ENGINEER**.



EXHIBIT A

WEST BOULEVARD SANITARY SEWER RECONSTRUCTION
WEST BLVD - OMAHA TO ST JOSEPH AND
ST JOSEPH ST - WEST BLVD TO WEST ST
PROJECT NO. SS11-1961 CIP NO. 50794