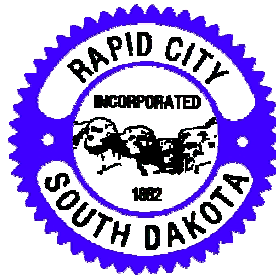


PROFESSIONAL ENGINEERING SERVICES CONTRACT



**Jackson Springs Phase IA Implementation Plan
Project No. W05 - 1425.1A CIP #50570**



ENGINEER: Burns & McDonnell Engineering Co., Inc.

PROFESSIONAL ENGINEERING SERVICES CONTRACT

March 7, 2006

Project: Jackson Springs Phase IA Implementation Plan
Project No. W05 - 1425.1A CIP #50570

Owner Information:

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

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

ENGINEER:

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

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

SCOPE OF SERVICES

The following is the Scope of Services to be provided by Burns & McDonnell Engineering Company, Inc., (hereinafter ENGINEER) for the City of Rapid City, located in Rapid City, South Dakota, (hereinafter OWNER).

This scope includes design and construction administration services for implementation of the following modifications as described further in Exhibit D:

- Sioux San Water Connection
- Pinedale Booster Pump Station
- Sioux San Altitude Valve
- WTP Backwash Line

Specific tasks for the design and construction administration are presented in Exhibit B:

RESPONSIBILITIES OF OWNER

The OWNER shall provide the following:

Assistance by placing at ENGINEER's disposal all available information pertinent to the assignment including any as-built drawings, utility locate information, physical/operational data related to the facilities that are required and requested by ENGINEER. ENGINEER shall rely on information made available by the OWNER as accurate without independent verification.

DELIVERABLES

The OWNER will be provided deliverables as outlined in the Scope of Services. Any draft copies for review by the OWNER will be provided in electronic (Word and .pdf) format. One final electronic copy (on CD) and twenty final hard copies will be provided.

Reuse of Documents: All documents prepared or furnished by ENGINEER (and ENGINEER'S independent professional associates and ENGINEERS) pursuant to this Agreement are instruments of service in respect of the Project, and ENGINEER shall have the ownership and property interest therein whether or not the Project is completed. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER'S independent professional associates or ENGINEERS, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER'S independent professional associates and ENGINEERS from and against all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

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

TIME OF SERVICE

ENGINEER will proceed with providing the services set forth herein immediately upon execution of this Agreement. The services will be completed within 240 calendar days of the Notice to Proceed.

COST REIMBURSIBLE NOT TO EXCEED

A. Amount of Payment:

1. For services performed, OWNER shall pay ENGINEER the sum of amounts determined as follows:
 - a. For time spent by personnel, payment at the hourly rates indicated on the attached fee schedule. Such rates include overhead and profit. The schedule is effective for the length of this contract.
 - b. For expenses incurred by ENGINEER, such as authorized travel and subsistence including airfare, food, lodging, automobile rental, commercial services, and incidental expenses, the cost to ENGINEER.

- c. For reproduction, printing, long-distance telephone calls, facsimile transmissions, company vehicle usage, testing apparatus, computer services and computer-assisted drafting (CAD), amounts will be charged according to the ENGINEER’s standard rates as identified in this contract.
 - d. For professional services rendered by others as subcontractor(s) to ENGINEER will be billed at the cost to ENGINEER plus 10 percent.
2. Total payment for the Scope of Services described herein shall not exceed Fifty Thousand Nine-Hundred Eighteen dollars and no cents (\$50,918.00) without written approval of OWNER. Exhibit A presents a detailed Professional Engineering Services Fee Estimate.
 3. ENGINEER shall not begin work on any phase of the project without written authorization by the OWNER.

TERMS AND CONDITIONS

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

BURNS & MCDONNELL ENGINEERING CO.

ACCEPTED:

ATTEST:

By _____

By _____

Title Vice President

Title Associate

Date _____

Date _____

CITY OF RAPID CITY

ACCEPTED:

ATTEST:

By _____

By _____

Title Mayor

Title Finance Officer

Date _____

Date _____

REVIEWED:

By _____

Title Project Manager

Date _____

EXHIBIT A

CONFIDENTIAL

**PERSONNEL EFFORT
RAPID CITY, SOUTH DAKOTA
JACKSON SPRINGS PHASE IA IMPLEMENTATION**

TASK NO.	ACTIVITY NAME	Total B&McD Labor		Ferber Engineering		Total Labor		Direct Expenses	Subtotals	TASK NO.
		Hrs	Cost	Hrs	Cost	Hrs	Cost	Cost	Costs	
1	PRELIMINARY DESIGN	14	\$1,622	32	\$3,378	46	\$5,000	\$500	\$5,500	1
1.1	Data Gathering	14	\$1,622	0	\$0	14	\$1,622	\$162	\$1,784	1.1
1.2	Tie to City Control Points	0	\$0	4	\$297	4	\$297	\$30	\$327	1.2
1.3	Utility Locates	0	\$0	8	\$495	8	\$495	\$50	\$545	1.3
1.4	Topographic Survey	0	\$0	12	\$792	12	\$792	\$79	\$871	1.4
1.5	Geotechnical Investigation	0	\$0		\$1,200	0	\$1,200	\$120	\$1,320	1.5
1.6	Property Information	0	\$0	8	\$594	8	\$594	\$59	\$653	1.5
2	FINAL DESIGN	122	\$12,930	65	\$4,879	187	\$17,809	\$1,781	\$19,589	2
2.1	Sioux San Water Connection	2	\$290	33	\$2,481	35	\$2,771	\$277	\$3,048	2.1
2.2	Pinedale Booster Pump Station - Suction Line Modifications	2	\$290	32	\$2,398	34	\$2,688	\$269	\$2,957	2.2
2.3	Sioux San Altitude Valve Addition	48	\$4,988	0	\$0	48	\$4,988	\$499	\$5,487	2.3
2.4	WTP Backwash Line (to HS Pumps)	70	\$7,362	0	\$0	70	\$7,362	\$736	\$8,098	2.4
3	BID PHASE	10	\$1,424	18	\$1,155	28	\$2,579	\$258	\$2,837	3
3.1	Prebid Conference	8	\$1,160	2	\$187	10	\$1,347	\$135	\$1,482	3.1
3.2	Issue Bid Documents / Maintain Plan Holders List	0	\$0	14	\$781	14	\$781	\$78	\$859	3.2
3.3	Bid Opening	2	\$264	2	\$187	4	\$451	\$45	\$496	3.3
4	CONSTRUCTION SERVICES ¹	68	\$7,528	191	\$11,996	259	\$19,524	\$1,952	\$21,476	4
4.1	Construction Staking	0	\$0	14	\$1,155	14	\$1,155	\$116	\$1,271	4.1
4.2	Preconstruction Conference	12	\$1,400	6	\$429	18	\$1,829	\$183	\$2,012	4.2
4.3	Weekly Progress Meetings	8	\$1,056	10	\$737	18	\$1,793	\$179	\$1,972	4.3
4.4	Shop Drawing Review	16	\$1,654	12	\$726	28	\$2,380	\$238	\$2,618	4.4
4.5	Resident Project Representative	6	\$714	120	\$7,260	126	\$7,974	\$797	\$8,771	4.5
4.6	Process Pay Requests	2	\$290	8	\$451	10	\$741	\$74	\$815	4.6
4.7	Contract Closeout	8	\$820	7	\$490	15	\$1,310	\$131	\$1,440	4.7
4.8	As-Build Drawings	16	\$1,594	14	\$748	30	\$2,342	\$234	\$2,576	4.8
	Travel Expenses:								\$1,516	
	Total Design/Construction Admin							\$4,491	\$50,918	

Notes: 1. Estimate assumes 120 hours of resident inspection services.

EXHIBIT B: SCHEDULE OF HOURLY PROFESSIONAL SERVICE BILLING RATES

Position Classification	Classification level	Hourly Billing Rate
General Office	5	\$49.00
Technician	6	\$52.00
Assistant	7	\$60.00
	8	\$82.00
	9	\$92.00
Staff	10	\$101.00
	11	\$111.00
Senior	12	\$119.00
	13	\$131.00
Associate	14	\$145.00
	15	\$152.00
Principal	16	\$159.00
	17	\$166.00

Notes:

1. Position classifications listed above refer to the firm's internal classification system for employee compensation. For example, "Associate", "Senior", etc., refer to such positions as "Associate Engineer", "Senior Architect", etc.
2. The hourly rates shown above are effective for services through completion of this contract, and are subject to revision thereafter.
3. For outside expenses incurred by Burns & McDonnell, such as authorized travel and subsistence, and for services rendered by others such as subcontractors, the client shall pay the cost to Burns & McDonnell.
4. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt.

EXHIBIT C - SCHEDULE OF REIMBURSABLE EXPENSES

Schedule of Reimbursable Expenses									
Description	Unit Cost								
Personal Mileage:	\$0.445								
Reproduction/Printing:	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">8.5"x 11" Copies White</td> <td style="text-align: right;">\$0.09/sheet</td> </tr> <tr> <td>24" x 34" Drawings White Bond</td> <td style="text-align: right;">\$0.48/sheet</td> </tr> <tr> <td>24" x 34" Drawings Mylar</td> <td style="text-align: right;">\$9.90/sheet</td> </tr> <tr> <td>8.5"x 11" Copies Color</td> <td style="text-align: right;">\$1.00/sheet</td> </tr> </table>	8.5"x 11" Copies White	\$0.09/sheet	24" x 34" Drawings White Bond	\$0.48/sheet	24" x 34" Drawings Mylar	\$9.90/sheet	8.5"x 11" Copies Color	\$1.00/sheet
8.5"x 11" Copies White	\$0.09/sheet								
24" x 34" Drawings White Bond	\$0.48/sheet								
24" x 34" Drawings Mylar	\$9.90/sheet								
8.5"x 11" Copies Color	\$1.00/sheet								
Long Distance Telephone:	Cost								
Postage:	Cost								
Courier:	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">2 hour</td> <td style="text-align: right;">\$22</td> </tr> <tr> <td>1 hour</td> <td style="text-align: right;">\$35</td> </tr> </table>	2 hour	\$22	1 hour	\$35				
2 hour	\$22								
1 hour	\$35								
Travel Expenses:									
Airfare:	Cost								
Lodging:	Cost								
Meals:	Cost								
Rental Car:	Cost								
Vehicle Expense:									
Sedan (4-door)	\$58/day + \$0.21/mile								
SUV – 4WD	\$65/day + \$0.25/mile								

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

EXHIBIT D**ENGINEERING SERVICES
FOR
JACKSON SPRINGS PHASE 1A IMPLEMENTATION PLAN****PROJECT NO. W05 - 1425.1A CIP #50570**

PROJECT DESCRIPTION

The consultant will provide services related to water main improvements, altitude valve installation, and backwash line modifications at the WTP. It is anticipated that the improvements will include the following:

1. Sioux San Water Connection: Install approximately 200 feet of 12" water line to improve fire flows along Sioux San Drive. The water line will run from Range Road to South Street along Sioux San Drive.
2. Pinedale Booster Pump Station: Tie the suction line to the high pressure line located approximately 20 feet south of the pump station.
3. Sioux San Altitude Valve Addition: Install an altitude valve and flowmeter (if feasible) inside the Sioux San Booster Pump Station to allow water to flow from the South Canyon Zone to the low level zone (Jackson Springs line). This task is necessary to provide adequate water to customers while the Jackson Springs gallery is not in use.
4. WTP Backwash Line: Provide redundancy for the backwash pump at the water treatment plant by installing backflow prevention, pressure reduction and piping.

The consultant services will include, but not be limited to, field surveys, design plans preparation, contract administration and construction inspection services. Generally, the consultant will be responsible for providing all services necessary to complete the projects. Responsibilities include design, construction inspection and administration, and project closeout.

Inspection services will include on-site observation, on an as needed basis, to assure that the methods and materials used by the contractor meet the intent of the plans and specifications

in completion of the work. A daily record of activity will be maintained by the inspector when on site 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 book to insure that the plans and specifications are complied with. Completed bound copies of the field notes and daily record will be provided to the City of Rapid City at the end of the project. All test results and an "as-built" set of drawings shall be submitted to the City of Rapid City within 30 days of project completion.

Administration of the project includes arranging and conducting a pre-bid conference, responding to bidder questions, conducting the bid opening, conducting a pre-construction conference, conducting weekly project coordination and progress meetings, providing monthly pay estimates on City of Rapid City forms, preparing a final construction punch list, submitting a certificate of completion and start of warranty period letter to the City of Rapid City signed by a professional engineer.

Design criteria shall include the City of Rapid City Standard Specifications, 2004 edition, City of Rapid City Drafting Standards (mechanical/process systems excluded), South Dakota Department of Environmental Resources Standards and Ten States Standards.

Background information includes City of Rapid City GIS maps, City of Rapid City benchmark data, City of Rapid City water, sanitary sewer and storm sewer maps, as-built drawings, and the City of Rapid City engineer's estimating guide.

Funding for the project is from the 933 Water Enterprise Fund.

SCOPE OF SERVICES REQUESTED

1. PRELIMINARY DESIGN PHASE
 - 1.1. Meet with City staff to detail project concept and scope.
 - 1.2. Review applicable background information.
 - 1.3. Perform the following planning tasks:

Perform site surveys sufficient for design plan preparation. The route and topography survey shall be tied to at least two City of Rapid City Monument Control system monuments utilizing State Plane coordinates.

Determine removal limits with approval of City of Rapid City representative.

Evaluate and recommend pipe materials.

Perform preliminary horizontal and vertical alignment analysis.

- 1.4 Water mains shall be designed to sustain an expected useful life of 80 years.
 - 1.5 Assist the City with easements acquisition, and prepare easement exhibits as necessary.
 - 1.6 Prepare preliminary opinion of probable construction cost.
 - 1.7 Evaluate corrosiveness of soils and design corrosion protection for water main, if needed.
 - 1.8 Define the scope of geotechnical investigations as may be necessary for final design, negotiate an agreement for the geotechnical engineering services, coordinate with the geotechnical engineer to complete these services, and provide a geotechnical report to be included in the plan documents, if needed. Payment for geotechnical services is the responsibility of the Consultant.
 - 1.9 Prepare preliminary drawings including locations of existing and new utilities. Show existing utilities locations with probable depths.
2. 95% DESIGN PHASE
- 2.1. Prepare an updated Engineer's opinion of construction costs.
 - 2.2. Provide three (3) copies of 95% complete plans and specifications to City of Rapid City's project manager for review.
3. FINAL DESIGN
- 3.1. Provide complete plans and specifications for a unit price construction contract. Plan sheets shall be prepared utilizing the latest City of Rapid City Drafting Standards (mechanical/process systems excluded).

- 3.2. Plans documents shall adhere to current City of Rapid City project plans guidelines (mechanical/process systems excluded).. Scale of plan & profile sheets, 1" = 20' Horiz., 1" = 5' Vert. Construction staking information shall include either of the following formats:
 - 3.2.1. On the Plans
 - Station offsets for all items of work requiring field staking
 - 3.2.2. In tabular format on a plan sheet (Schedule)
 - Coordinates and description of inter-visible control points
 - Coordinates of all items of work requiring field staking
 - Benchmark information shall be provided on each sheet.
- 3.3. Provide project layout to include lot lines (front and side) and addresses of all properties (adjacent to construction, or alternatively, in service area).
- 3.4. Coordinate directly with utility companies' engineering divisions to ensure that all existing utilities are completely and accurately identified and located in the field; that pertinent information regarding depth, material, size, etc. are noted on the plans; and that conflicts requiring relocation of utilities or special construction techniques are fully specified in the contract documents. Preliminary plans shall be provided to the pertinent utilities for comment at the time they are complete.
- 3.5. Provide detailed specifications supplementing the City of Rapid City Standard Specifications, as necessary.
- 3.6. Prepare final opinion of probable construction cost for the project.
- 3.7. Deliver the following:
 - Construction plans on 22"X34" Mylar and on CD compatible with AutoCAD Release 2006 format.
 - All topographic, control, and design points in the .dwg file and in tabular format, both on CD and on hard copy printout.
 - Complete supplemental (detailed) specifications on CD in Microsoft Word format.
 - A unit price cost estimate on CD in Microsoft Excel format on the City of Rapid City "Engineer's Estimate" form.

4. BIDDING PHASE

Provide the following standard bidding phase services:

- Submit advertisement for bids to Rapid City Journal and Construction Industry Center after authorized by the City Project Manager.
- Print and issue plans and specifications to bidders, and two (5) copies to the City of Rapid City. The City Project Manager shall have the plan holder's list emailed to him daily as changes occur.
- Prepare and submit bid documents on the City of Rapid City Microsoft Excel form.
- Direct Pre-bid Conference.
- Issue addenda to the bid documents as required.
- Attend the bid opening.
- Attend Public Works Committee and Council Meetings as required.
- Prepare the Bid Tab in City of Rapid City Microsoft Excel project book format and submit this and a printed hard copy to the Public Works Department within one (1) working day of the bid opening. Forward a copy of the final bid tab to all bidders.
- Prepare contracts and submit to contractor for execution.
- Review construction contract documents and other submittals from the contractor and submit to Public Works Department for City Attorney's approval and signatures of the Mayor and Finance Officer.
- Prepare Notice to Proceed and forward to the successful contractor and Public Works Department after authorized by the City Project Manager.

5. CONSTRUCTION PHASE

Provide construction management services to include:

- Review and take action on shop drawings, test results, and other submittals.
- Review and take action on Contractor field orders and change orders all field orders and change orders shall be reviewed with the project manager and authorized by the City Project Manager for issuing.
- Provide construction staking and marking removal limits of appropriate items.

- Distribute Public Service Announcements (P.S.A.'s) to all local media and the Public Works Department. 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.
- Provide daily observation and prepare daily report record on City of Rapid City forms. Submit detachable copies to Public Works Department on a weekly basis.
- Coordinate with the City's soil compaction testing firm and review results. Soil compaction testing shall be conducted according to the Standard Specifications.
- Prepare "As Built" plans and specifications on 22"X34" Mylar and on CD compatible with AutoCAD Release 2006 format. Submit to Public Works Department.
- Prepare and submit monthly pay requests for consultant and contractor on City of Rapid City forms.
- Prepare and submit project completion punch list items to the Contractor and Public Works Department.
- Prepare letter of certification of project completion and start of warranty period.

6. MEETINGS AND SUBMITTALS

6.1. Project team members will include:

- 6.1.1. The Consultant
- 6.1.2. City Engineering Division staff
- 6.1.3. Operations Division staff
 - Utility Maintenance Division (Service area and O&M related issues)
 - Water Division

6.2. Meetings requiring the Consultant's (or Subconsultant's) participation will include, but may not be limited to the following:

- Preliminary review of alignments
- 95% Plans and Specifications Review
- Prebid Conference
- Bid Opening
- Pre-construction Conference
- Construction Progress Meetings

6.3. Submittals required during the design phase include:

- Preliminary review of alignments
- 95% Plans and Specifications
- 100% Plans and Specifications

CONSULTANT SCHEDULE

Contract Negotiations Complete	March 7, 2006
Notice to Proceed with Design	March 21, 2006
95% Plans and Engineers Estimate Submittal	April 14, 2006
City Comments on 95% Plans	April 19, 2006
Final Plans and Specifications Complete	April 28, 2006
Project Advertisement	April 29, 2006
	May 6, 2006
Project Bid Opening Date	May 9, 2006
Anticipated Completion Date (Construction)	June 16, 2006
<ul style="list-style-type: none"> • Sioux San Water Connection • Pinedale Booster Pump Station • Sioux San Altitude Valve Addition 	
Anticipated Completion Date (Construction)	October 20, 2006 **
<ul style="list-style-type: none"> • WTP Backwash Line and 100% project 	

* Start date for this activity dependent on water treatment plant operation.

Failure to meet contract proposal deadlines may result in termination of contract. Consultant will be paid for services to date.

BURNS & MCDONNELL ENGINEERING COMPANY, INC.
TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

Project: JACKSON SPRINGS PHASE IA IMPLEMENTATION Date of Letter, Proposal or Agreement: FEBRUARY 21, 2006

Client: CITY OF RAPID CITY

1. SCOPE OF SERVICES

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

2. PAYMENTS TO BMCD

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

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

3. INSURANCE

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

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

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

4. INDEMNIFICATION

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

B. If this Project involves construction and BMCD does not provide consulting services during construction including, but not limited to, on-site monitoring, site visits, site observation, shop drawing review and/or design clarifications, Client agrees to indemnify and hold harmless BMCD from any liability arising from this Project or Agreement, except to the extent caused by BMCD's negligence.

Client Signature: _____
5. PROFESSIONAL RESPONSIBILITY - LIMITATION OF REMEDIES

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

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

C. BMCD's aggregate liability for all damages connected with its services for the Project not excluded by the preceding subparagraph, whether or not covered by BMCD's insurance, will not exceed the ~~greater of \$100,000 or the compensation paid for BMCD's services~~ ^{\$1,000,000}. PDF

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

6. PERIOD OF SERVICE AND SCHEDULE

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

7. COMPUTER PROGRAMS OR MODELS

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

8. ELECTRONIC MEDIA AND DATA TRANSMISSIONS

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

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

9. DOCUMENTS

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

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

(continued on reverse side)

10. ESTIMATES, SCHEDULES, FORECASTS, AND PROJECTIONS

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

11. POLLUTION

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

12. ON-SITE SERVICES

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

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

13. CHANGES

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

14. TERMINATION

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

15. DISPUTES, NEGOTIATIONS, MEDIATION

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

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

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

16. WITNESS FEES

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

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

17. CONTROLLING LAW AND VENUE

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

18. RIGHTS AND BENEFITS - NO ASSIGNMENT

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

19. ENTIRE CONTRACT

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

20. SEVERABILITY

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

- END -