

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

Date: May 13, 2008

Project Name & Number: Utility Rate Study  
PW08-1715

CIP #: 50722

Project Description: Conduct water and sewer utility rate study and develop ordinances as necessary.

Consultant: Advanced Engineering and Environmental Services, Inc.

Original  
Contract Amount: \$166,333.00

Original  
Contract Date: May 19, 2008

Original  
Completion Date: October 6, 2008

Amendment Number:

Amendment Description:

Current Contract Amount: \_\_\_\_\_

Current Completion Date: \_\_\_\_\_

Change Requested: \_\_\_\_\_

New Contract Amount: \_\_\_\_\_ \$0.00

New Completion Date: \_\_\_\_\_

Funding Source This Request:

Amount	Dept.	Line Item	Fund	Comments
\$83,166.50	833	4223	604	
\$83,166.50	933	4223	602	
\$166,333.00	Total			

## Agreement Review & Approvals

\_\_\_\_\_  
Project Manager Date

\_\_\_\_\_  
Division Manager Date

\_\_\_\_\_  
Department Director Date

\_\_\_\_\_  
City Attorney Date

### ROUTING INSTRUCTIONS

Route two originals of the Agreement for review and signatures.  
Finance Office - Retain one original  
Project Manager - Retain second original for delivery to Consultant  
cc: Public Works  
Engineering  
Project Manager

### FINANCE OFFICE USE ONLY

(Note to Finance: Please write date of Agreement in appropriate space in the Agreement document)

	Date	Initials	Approved	
Appropriation			Y	N
Cash Flow			Y	N

**AGREEMENT  
BETWEEN  
OWNER AND ENGINEER  
FOR  
STUDY AND REPORT PHASE  
PROFESSIONAL SERVICES**

This is an Agreement effective as of May 19, 2008 ("Effective Date") between the **City of Rapid City, 300 Sixth Street, Rapid City, SD 57701** ("OWNER") and **Advanced Engineering and Environmental Services, Inc., 2016 Washington Street South, Grand Forks, ND 58201** ("ENGINEER"). OWNER retains ENGINEER to perform professional services, in connection with City Project No. PW08-1715; CIP Number 50722, Utility Rate Study. OWNER and ENGINEER, in consideration of their mutual covenants as set forth herein, agree as follows:

**ARTICLE 1--ENGINEER'S SERVICES**

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**1.01 Scope**

A. ENGINEER shall provide the services set forth in Exhibit SR-A.

B. OWNER acknowledges that engineering services began prior to the Effective Date of this agreement. Upon this Agreement becoming effective, ENGINEER is authorized to continue services as set forth in Exhibit SR-A.

C. If authorized in writing by OWNER, and agreed to by ENGINEER, services beyond the scope of this Agreement will be performed by ENGINEER for additional compensation.

**ARTICLE 2--OWNER'S RESPONSIBILITIES**

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**2.01 General**

A. OWNER shall have the responsibilities set forth herein and in Exhibit SR-A.

**ARTICLE 3--TIMES FOR RENDERING SERVICES**

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3.01 ENGINEER's services will be performed within the time period or by the date stated in Exhibit SR-A.

3.02 If ENGINEER's services are delayed or suspended in whole or in part by OWNER, ENGINEER shall be entitled to equitable adjustment of the time for performance and rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

**ARTICLE 4--PAYMENTS TO ENGINEER**

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**4.01 Methods of Payment for Services of ENGINEER.**

A. OWNER shall pay ENGINEER for services rendered under this Agreement as follows:

1. An amount equal to the cumulative hours charged to the Assignment by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Assignment, plus Reimbursable Expenses, and ENGINEER's consultants, if any. The total compensation under paragraph 4.01.A.1 is not to exceed \$166,333.00 without written authorization.

2. ENGINEER's Reimbursable Expenses Schedule and Standard Hourly Rate Schedule are attached to this Agreement as Exhibits SR-C and SR-D, respectively.

3. The amounts billed for ENGINEER's services will be based on the cumulative hours charged to the Assignment during the billing period by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and ENGINEER's Consultants' charges, if any, incurred during the billing period.

#### 4.02 Other Provisions Concerning Payment

##### A. Maximum Compensation Amounts.

1. Not used.

2. When maximum compensation amounts have been stated herein and it subsequently becomes apparent to ENGINEER that a compensation amount will be exceeded, ENGINEER shall give OWNER written notice thereof. Promptly thereafter and if appropriate, OWNER and ENGINEER shall review the matter of services completed, compensation received, services remaining to be performed, and compensation for such services. Based on the review of this information, OWNER and ENGINEER may agree to one of the following: 1) a revised amount of compensation to correspond to the actual level of effort required to provide the scope of services; 2) a revised scope of services to correspond to the maximum compensation amount; 3) a revised amount of compensation to correspond to a revised scope of services; or 4) no revisions to the estimated compensation amount or scope of services.

##### B. Adjustments

1. ENGINEER's compensation is conditioned on time to complete the Assignment not exceeding the time identified in Exhibit SR-A. Should the time to complete the Assignment be extended beyond this period due to reasons not the fault of and beyond the control of ENGINEER, the total compensation to ENGINEER shall be appropriately adjusted upon written approval by OWNER.

2. The Standard Hourly Rates Schedule and Reimbursable Expenses Schedule will be adjusted annually (as of January 1<sup>st</sup>) to reflect equitable changes to the compensation payable to ENGINEER. For the scope of services presented in Exhibit SR-A, the rates identified in attachment SR-D shall be held firm for the duration of the project.

C. *Reimbursable Expenses.* Reimbursable Expenses means the actual expenses incurred by ENGINEER or ENGINEER's Consultants directly in connection with the Assignment, including the categories and items listed in Exhibit SR-C.

D. *For Additional Services.* OWNER shall pay ENGINEER for all services not included in the scope of this Agreement on the basis agreed to in writing by the parties at the time such services are authorized by OWNER.

#### **ARTICLE 5--DESIGNATED REPRESENTATIVES**

5.01 Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall each designate specific individuals as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of their respective party.

#### **ARTICLE 6--CONTENT OF AGREEMENT**

6.01 The following Exhibits are incorporated herein by reference:

A. Exhibit SR-A, "Further Description of Services, Responsibilities, Time, and Related Matters – Scope of Services," consisting of 5 pages.

B. Exhibit SR-B, "Standard Terms and Conditions," consisting of 4 pages.

C. Exhibit SR-C, "Reimbursable Expenses Schedule," consisting of 1 page.

D. Exhibit SR-D, "Standard Hourly Rates," consisting of 1 page.

**6.02 Total Agreement**

A. This Agreement (consisting of pages 1 to 3, inclusive, together with the Exhibits identified in paragraph 6.01) constitutes the entire agreement between OWNER and 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. IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

ENGINEER:

\_\_\_\_\_  
By: Alan Hanks  
Title: Mayor  
Date Signed: \_\_\_\_\_

\_\_\_\_\_  
By: Steve L. Burian, P.E.  
Title: Chief Executive Officer  
Date Signed: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Name: Jim Preston  
Title: Finance Officer

ATTEST: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for giving notices:  
300 Sixth Street  
Rapid City, SD 57701  
\_\_\_\_\_

Address for giving notices:  
2016 Washington Street South  
Grand Forks, ND 58201  
\_\_\_\_\_

Designated Representative (Paragraph 5.01):  
Name: Dan Coon, P.E.  
Title: Project Manager  
Phone Number: (605) 394-4154  
Facsimile Number: (605) 394-6636  
E-Mail Address: dan.coon@rcgov.org

Designated Representative (Paragraph 5.01):  
Name: Steve L. Burian, P.E.  
Title: Chief Executive Officer  
Phone Number: (701) 746-8087  
Facsimile Number: (701) 746-0370  
E-Mail Address: Steve.Burian@ae2s.com

This is **EXHIBIT SR-A**, consisting of five (5) pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Study and Report Phase Professional Services** dated May 19, 2008.

## **Further Description of Services, Responsibilities, Time, and Related Matters – Scope of Work**

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### **WATER AND WATER RECLAMATION UTILITY RATE STUDY**

#### **Project Management and Administration**

Coordinate the aspects of project delivery between OWNER and ENGINEER, including the collection of relevant data, communications required to answer follow-up questions upon review of the data, communications related to future operations of the water and water reclamation system, coordination of meeting dates and times, submittal of final deliverables for the project, and project billing.

#### **Task 1 – Compile and Review Existing Data**

##### **1.1 Project Initiation/Kickoff Meeting**

Work with the OWNER to develop and refine a project scope matched with the OWNER's desired objectives. Conduct a meeting in Rapid City with OWNER'S Utility Rate Committee, Finance, and Public Works staff to review informational needs and develop a better understanding of water and water reclamation utility operations, billing systems, rate strategies, rate covenant or legislative and legal restrictions, and governmental utility service agreements, as well as review the objectives of the OWNER. Review and refine rate study scope, schedule, milestones, and deliverables. In addition, take tours of pertinent facilities to become familiar with the water and water reclamation systems.

##### **1.2 Data Review and Analysis**

Obtain and review relevant technical, operational, and financial information to assess water and water reclamation utility operations, including capital improvements plans (CIPs) and pertinent information from the water system master plan.

##### **1.3 Progress Meeting #1 – Data Review**

Conduct a meeting via teleconference, videoconference, or GoTo Meeting with OWNER's staff to review questions regarding data received, discuss assumptions associated with operational and billing data, and summarize work to be completed under the Cost of Service Analysis (COSA). Based on the quality and level of detail associated with data illustrating the level of service for each customer class, discuss preliminary assumptions and methodologies associated with the water and water reclamation COSA.

##### **1.4 Utility Rate Committee Meeting #1 – Data Review**

Conduct a meeting in Rapid City with OWNER's Utility Rate Committee to summarize the results of Progress Meeting #1, agree upon assumptions and methodology for COSA, and obtain input into the direction to be taken.

## **Task 2 – Development of Rate Structures**

### **2.1 Cost of Service Analysis**

#### **Water**

Based on actual expenses and revenues from a recent year representative of average usage (test year) and review of expenses and revenues dating back five years, complete the assignment of relevant cost elements to each class of water system users based on maximum flow (design capacity), actual flow, and number of meters. Based on input from the OWNER, consideration will be given to unique circumstances associated with the various user classes, such as economic development, etc. Develop a COSA model for the water system based on an industry-standard methodology consisting of the three-step process indicated below.

1. Functionalization of costs according to specific functional components, activities, or parts of the operation.
2. Classification of functionalized costs into customer, commodity, or capacity components.
3. Allocation of costs to customer classes based on a review of statistics for each user class such as the number of meters, flow volume, system capacity, and any additional parameters specified by the OWNER.

#### **Water Reclamation**

Based on actual expenses and revenues from a recent year representative of average usage (test year) and review of expenses and revenues dating back five years, complete the assignment of relevant cost elements to each class of water reclamation system users based on a methodology to be agreed upon during Utility Rate Committee Meeting No. 1. The methodology will be associated with the level of detail of available data. Based on input from the OWNER, consideration will be given to unique circumstances associated with the various user classes, such as economic development, etc. Develop a COSA model for the water reclamation based on industry-standard practices for the assignment of water reclamation system costs.

### **2.2 Progress Meeting #2 – COSA Results**

Conduct a meeting via teleconference, videoconference, or GoTo Meeting with OWNER's staff to review preliminary COSA results. Solicit feedback as to the appropriateness of the results in terms of data and assumptions utilized. Discuss the use of COSA results in the rate design and capital evaluation steps to follow Progress Meeting #2.

### **2.3 Utility Rate Committee Meeting #2 – COSA Results**

Conduct a meeting in Rapid City with OWNER's Utility Rate Committee to summarize the results of Progress Meeting #2, solicit feedback to be utilized to finalize the COSA results and recommendations, discuss the usage of COSA in the rate design and capital evaluation steps, and obtain input into the direction to be taken.

### **2.4 Rate Design**

Compare the results of the COSA cost versus revenue allocations with the current water and water reclamation rate structures. If inequities are identified, develop a maximum of three alternate water and water reclamation rate structure options to meet the OWNER's objectives; recommend a preferred rate structure for each utility; assess alternative appropriateness, based on potential future changes in projected revenues, expenses, and capital outlay; assess sensitivity of the preferred (recommended) rate structures; and compare the recommended rate structures to service costs in neighboring communities to assess competitiveness.

## **2.5 Capital Funding Alternatives Evaluation**

Conduct a review of potential capital funding alternatives to be considered in the revenue adequacy evaluation. Provide information on each alternative to the OWNER and solicit feedback as to which alternatives to consider in the revenue adequacy analyses for general capital improvements and for major capital improvements. Incorporate up to two alternate funding options each for the water and water reclamation revenue adequacy analyses.

## **2.6 Progress Meeting #3 – Review Rate Design Results and Capital Funding Evaluation**

Conduct a meeting via teleconference, videoconference, or GoTo Meeting with OWNER’s representatives to discuss cost of service-based rate design alternatives, recommended rate structures for water and water reclamation, and capital funding options for both utilities. Solicit feedback from the OWNER’s representatives in terms of appropriateness of the data and assumptions used in the analysis.

## **2.7 Utility Rate Committee Meeting #3 – Rate Design Results and Capital Funding Evaluation**

Conduct a meeting in Rapid City with OWNER’s Utility Rate Committee to summarize the results of Progress Meeting #3 and obtain input into the direction to be taken. Solicit feedback from the OWNER’s representatives in terms of concurrence with the recommended rate structures for water and water reclamation and the selection of a maximum of two alternative funding sources per utility upon which revenue adequacy will be evaluated.

## **2.8 Develop Five-Year Revenue Adequacy Projections**

Develop revenue adequacy models for the water and water reclamation utilities. Solicit feedback from the OWNER’s representatives regarding anticipated growth, future expenses, and projected water use and discharges to the water reclamation system.

1. Using input from OWNER, forecast appropriate future increases in operating and capital expenditures.
2. Create a five-year estimate of future operating and capital expenses, and operating and non-operating revenues for the utilities.
3. Complete a baseline analyses for water and water reclamation representing the recommended rate structures and no projected increases.
4. Complete up to four water system revenue adequacy scenarios projecting rate adjustments:
  - a. Rate Projections without WTP Improvements and Existing Capital Funding Strategies
  - b. Rate Projections with WTP Improvements and Existing Capital Funding Strategies
  - c. Rate Projections with WTP Improvements and Alternate Capital Funding Strategy – 1
  - d. Rate Projections with WTP Improvements and Alternate Capital Funding Strategy – 2
5. Complete up to three water reclamation system revenue adequacy scenarios.
  - a. Rate Projections with Existing Capital Funding Strategies
  - b. Rate Projections with Alternate Capital Funding Strategy – 1
  - c. Rate Projections with Alternate Capital Funding Strategy – 2

6. Recommend increases for years that indicate a revenue deficiency.
7. Develop recommendation of preferred water and water reclamation alternatives.

### **2.9 Progress Meeting #4 – Review Revenue Adequacy, Rate Adjustment Projections, and Study Conclusions and Recommendations**

Conduct a meeting via teleconference, videoconference, or GoTo Meeting with OWNER's representatives to review results of the revenue adequacy analyses, corresponding rate adjustment projections, and study conclusions and recommendations. Solicit feedback from the OWNER's representatives with regard to the appropriateness of the adjustments, conclusions, and recommendations in terms of the objectives set forth by the Utility Rate Committee.

### **2.10 Utility Rate Committee Meeting #4 – Review Revenue Adequacy, Rate Adjustment Projections, and Study Conclusions and Recommendations**

Conduct a meeting in Rapid City with OWNER's Utility Rate Committee to summarize the results of Progress Meeting #4, solicit feedback regarding any adjustments required prior to preparation of the final report, and obtain direction for completion of the study.

## **Task 3 - Interaction with City Council and Public**

### **3.1 Public Meeting #1 – Public Works Committee**

Following the completion of Utility Rate Committee Meeting #4, provide an onsite presentation to the OWNER's Public Works Committee conveying the draft results, conclusions, and recommendations derived from the study.

### **3.2 Public Input Meeting**

On the same day as Public Meeting #1, conduct a public meeting in Rapid City to convey the draft results and recommendations of the study and obtain public input.

### **3.3 Public Meeting #2 – Public Works Committee**

Provide an onsite presentation to the OWNER's Public Works Committee conveying the final study results, conclusions, and recommendations.

### **3.4 Presentation to the City Council**

Following review of the draft report by the OWNER's representatives and finalization of study results and recommendations, provide a presentation to the OWNER's City Council summarizing the final results, conclusions, and recommendations from the study.

## **Task 4 - Development of Ordinances**

### **4.1 Ordinance Preparation**

At the OWNER's direction, revise the existing water and water reclamation ordinances to reflect changes to the rate structure to be implemented for 2009 through 2013.



## 4.2 Public Readings of New Ordinance

At the OWNER's discretion, attend the First and Second Readings of the water and water reclamation ordinances to answer questions from the City Council.

### Task 5 – Documentation of Rate Structures

#### 5.1 Preparation of Report

Prepare a report detailing the assumptions, methodology, findings, conclusions, and recommendations associated with the study. Provide a copy of the draft report to OWNER's representative for review by OWNER's staff. Following review by the OWNER, provide four copies of the final report to OWNER, including electronic copies of the COSA and revenue adequacy spreadsheets. Provide a comparison of utility rates to other similar systems in the region. Solicit feedback from representatives of the OWNER prior to finalizing the report.

#### Schedule

Based on OWNER's desired completion date of September 1, 2008, a general outline of the anticipated project schedule is outlined below. It is likely that the schedule may shift, but the target date of September 1, 2008 is not anticipated to change barring unforeseen delays in obtaining data, or difficulty scheduling progress meetings that generally fall within the anticipated timeline.

Week of May 5-9:	Request Existing Data
Week of May 12-16:	Project Initiation/Kickoff Meeting, Gather Existing Data (2 Days); Review Existing Data
Week of May 19-23:	Review Existing Data
Week of May 26-30:	Progress Meeting #1: Data Review; Utility Rate Committee Meeting #1 – Data Review
Week of June 2-6:	Cost of Service Analyses
Week of June 9-13:	Cost of Service Analyses
Week of June 16-20:	Cost of Service Analyses
Week of June 23-27:	Progress Meeting #2 – Cost of Service Results; Utility Rate Committee Meeting #2 – Cost of Service Results
Week of June 30-July 4:	Rate Design and Capital Funding Analyses
Week of July 7-11:	Rate Design and Capital Funding Analyses
Week of July 14-18:	Revenue Adequacy Evaluation; Progress Meeting #3 – Rate Design and Capital Funding Results; Utility Rate Committee Meeting #3 – Rate Design and Capital Funding Results
Week of July 21-25:	Revenue Adequacy Evaluation
Week of July 28-August 1:	Revenue Adequacy Evaluation
Week of August 4-8:	Revenue Adequacy Evaluation; Progress Meeting #4 – Revenue Adequacy Results; Utility Rate Committee Meeting #4 – Revenue Adequacy Results
Week of August 11-15:	Draft Final Results and Ordinances
Week of August 18-22:	Draft Final Results and Ordinances; Provide Draft Report to OWNER for review
Aug 26*:	Present Draft Results to Public Works Committee, Hold Public Meeting
September 1-26	Finalize Results
Sept 30*:	Present Final Results to Public Works Committee
October 6*:	Final Results Presentation to City Council
TBD:	First Reading of Ordinances
TBD:	Second Reading of Ordinances

\* Preliminary dates selected based on published Committee and Council agendas and preliminary project team availability. ENGINEER and OWNER may agree to alternate dates.

This is EXHIBIT **SR-B**, consisting of 5 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Study and Report Phase Professional Services** dated May 19, 2008.

## **Standard Terms and Conditions**

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Article 6 of the Agreement is amended and supplemented to include the following agreement of the parties:

### **B.6.01.B Standard Terms and Conditions**

1. **Standard of Care**

The standard of care for all professional services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.
2. **Independent Contractor**

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either OWNER or ENGINEER. ENGINEER's services under this Agreement are being performed solely for OWNER's benefit, and no other entity shall have any claim against ENGINEER because of this Agreement or the performance or nonperformance of services hereunder. OWNER agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.
3. **Payments to ENGINEER**

Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER monthly, unless otherwise agreed. Invoices are due and payable within 45 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 45 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said forty-fifth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges.
4. **Insurance**

ENGINEER will maintain insurance coverage for Workers' Compensation, General Liability, and Automobile Liability and will provide certificates of insurance to OWNER upon request.
5. **Indemnification and Allocation of Risk**
  - a. Not used.
  - b. Not used.
  - c. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any injuries, losses, damages and expenses caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.
  - d. Not used.

e. Not used.

6. **LIMIT OF LIABILITY**

**TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY, IN THE AGGREGATE, OF ENGINEER AND ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND CONSULTANTS, OR ANY OF THEM TO OWNER AND ANYONE CLAIMING BY, THROUGH, OR UNDER OWNER, FOR ANY AND ALL INJURIES, LOSSES, DAMAGES AND EXPENSES, WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO THIS AGREEMENT FROM ANY CAUSE OR CAUSES INCLUDING BUT NOT LIMITED TO THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR WARRANTY, EXPRESS OR IMPLIED, OF ENGINEER OR ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND CONSULTANTS, OR ANY OF THEM, SHALL NOT EXCEED THE TOTAL AMOUNT OF \$166,333.00.**

7. Dispute Resolution  
Not Used.

8. Termination of Contract

Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, OWNER shall pay to ENGINEER all amounts owing to ENGINEER under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.

9. Access

OWNER shall arrange for safe access to and make all provisions for ENGINEER and ENGINEER's Consultants to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

10. Hazardous Environmental Conditions

It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a "Hazardous Environmental Condition," i.e. the presence at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Assignment. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with ENGINEER's activities under this Agreement.

11. Patents

ENGINEER shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.

12. Ownership and Reuse of Documents

All documents prepared or furnished by ENGINEER pursuant to this Agreement are instruments of service, and ENGINEER shall retain an ownership and property interest therein. Reuse of any such documents by OWNER shall be at OWNER's sole risk; and OWNER agrees to indemnify, and hold ENGINEER harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by OWNER or by others acting through OWNER.

13. Use of Electronic Media

- a. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- b. When transferring documents in electronic media format, ENGINEER makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Assignment.
- c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

14. Opinions of Probable Construction Cost

- a. Construction Cost is the cost to OWNER to construct proposed facilities. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with OWNER's contemplated project, or the cost of other services to be provided by others to OWNER pursuant to of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
- b. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

15. Opinions of Total Project Costs

- a. Total Project Costs are the sum of the probable Construction Cost, allowances for contingencies, the estimated total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, and OWNER's costs for legal, accounting, insurance counseling or auditing services, and interest and financing charges incurred in connection with a proposed project, and the cost of other services to be provided by others to OWNER pursuant to this Agreement.

- b. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.
16. Force Majeure  
ENGINEER shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond ENGINEER's reasonable control.
17. Assignment  
Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.
18. Binding Effect  
This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.
19. Severability and Waiver of Provisions  
Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
20. Survival  
All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.
21. Headings  
The headings used in this Agreement are for general reference only and do not have special significance.
22. Controlling Law  
This Agreement is to be governed by the law of the State of South Dakota. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.
23. Notices  
Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

This is **EXHIBIT SR-C**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Study and Report Phase Professional Services** dated May 19, 2008.

### **Reimbursable Expenses Schedule**

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Reimbursable Expenses are subject to annual review and adjustment. Reimbursable expense rates in effect on the Effective Date of the Agreement are:

#### **Reimbursable Expenses Rates**

Transportation	\$0.60/mile
Survey Vehicle	\$0.65/mile
Photocopies	\$0.10/copy
Plots – Color Bond	\$1.25/s.f.
Plots – Monochrome Bond/Vellum	\$0.75/s.f.
Plots – Film/Photo High Gloss	\$2.00/s.f.
Digital Imaging	\$10.00/day
Laser Printouts	\$0.20/page
Color Laser Printouts/Copies	\$0.68/page
Fax	\$0.40/page
Projector	\$25.00/hour
Total Station	\$10.00/hour
Total Station – Robotic	\$35.00/hour
Pro-XR GPS	\$15.00/hour
Fast Static/RTK GPS	\$50.00/hour
All Terrain Vehicle/Boat	\$100.00/day
Hydrant Pressure Recorders	\$10.00/day
Telemetry Radio	\$50.00/site
Pressure Recorder	\$5.00/day
Outside Services*	cost *1.15
Out of Pocket Expenses**	cost*1.15
Rental Car	cost*1.20

\* Includes laboratory testing, architectural and engineering consultants, surveying, etc.

\*\* Includes toll telephone, shipping, postage, subsistence, technical literature, equipment rental, etc.

*These rates will be held firm through the duration of the project for the scope described in Exhibit SR-A.*

This is **EXHIBIT SR-D**, consisting of 1 page, referred to in and part of the **Study and Report Phase Professional Services** dated May 19, 2008.

## Standard Hourly Rates Schedule

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Standard Hourly Rates will be held constant for the duration of the project scope presented in Exhibit SR-A. Hourly rates for services in effect on the date of the Agreement are:

### Labor Rates

Engineer I	\$85.00		
Engineer II	\$95.00	Financial Analyst I	\$70.00
Engineer III	\$110.00	Financial Analyst II	\$85.00
Engineer IV	\$125.00	Financial Analyst III	\$95.00
Engineer V	\$135.00	Financial Analyst IV	\$110.00
Engineer VI	\$145.00	Financial Analyst V	\$125.00
Engineer VII	\$157.00		
		Administrative I	\$42.00
Project Manager	\$135.00	Administrative II	\$52.00
Technical Expert I	\$175.00	Administrative III	\$63.00
Technical Expert II	\$190.00	Administrative IV	\$73.00
Technical Expert III	Negotiable	Administrative V	\$81.00
I&C Technician I	\$80.00		
I&C Technician II	\$90.00		
I&C Technician III	\$100.00		
I&C Technician IV	\$110.00		
I&C Technician V	\$122.00		
I&C Technician VI	\$132.00		
Land Surveyor I	\$72.00		
Land Surveyor II	\$82.00		
Land Surveyor III	\$94.00		
Land Surveyor IV	\$104.00		
Land Surveyor V	\$116.00		
Land Surveyor VI	\$135.00		
Engineering Technician I	\$46.00		
Engineering Technician II	\$58.00		
Engineering Technician III	\$70.00		
Engineering Technician IV	\$82.00		
Engineering Technician V	\$92.00		
Engineering Technician VI	\$106.00		
Engineering Technician VII	\$126.00		
Marketing Consultant	\$85.00		
IT System Administrator	\$120.00		
CPA	\$125.00		
Senior Consultant	\$135.00		