

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

Date:

Project Name & Number: Professional Engineering Services Contract for City of Rapid City Water Treatment Plant Upgrades – Membrane Prepurchase & Jackson Springs Design, Project No.: W07 - 1689 **CIP #:** 50696

Project Description: Membrane Prepurchase & Jackson Springs Final Design - Design of the recommended Jackson Springs Water Treatment Plant including prepurchase of the membrane equipment for both the Mt. View and Jackson Springs water treatment plants. The design will be substantially based on the conceptual designs previously completed and approved by City Council.

Consultant: Burns & McDonnell Engineering Co., Inc.

**Original
Contract Amount:**

**Original
Contract Date:**

**Original
Completion Date:**

Amendment Number:

Amendment Description:

Current Contract Amount: \$1,745,552.00 **Current Completion Date:** August 1, 2009

Change Requested:

New Contract Amount: \$1,745,552.00 **New Completion Date:** August 1, 2009

Funding Source This Request:

Amount	Dept.	Line Item	Fund	Comments
\$1,745,552.00	933	4223	602	Water Enterprise Replacement/Improvement
\$1,745,552.00	Total			

Agreement Review & Approvals



Project Manager

8-6-08

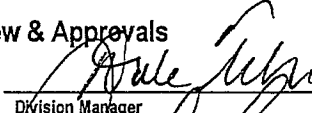
Date



Department Director

8-6-08

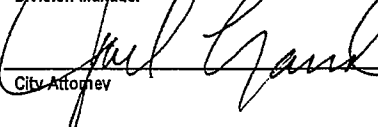
Date



Division Manager

8-6-08

Date



City Attorney

8-6-08

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

PROFESSIONAL ENGINEERING SERVICES CONTRACT



**Rapid City Water Treatment Plant Upgrades
Membrane Prepurchase & Jackson Springs Design
City of Rapid City Project No. W07-1689 (CIP No. 50696)**



ENGINEER: Burns & McDonnell Engineering Co., Inc.

PROFESSIONAL ENGINEERING SERVICES CONTRACT

August 5, 2008

Project: Rapid City Water Treatment Plant Upgrades
Membrane Prepurchase & Jackson Springs Design
City of Rapid City Project No. W07-1689 (CIP No. 50696)

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

GENERAL

Burns & McDonnell Engineering Company, Inc., (hereinafter ENGINEER) was selected by the City of Rapid City, South Dakota (hereinafter OWNER) to complete the Water Facilities Planning and Jackson Springs Water Treatment Facility Reconstruction project. After the consultant selection process, the professional services described in the "Request for Interviews" (Mr. Stacey Titus, August 8, 2005) were further refined by the OWNER. The following major phases of the project have been completed.

- **Phase 1A** – Existing Jackson Springs Infiltration Gallery Customer Water Supply Evaluation and evaluate the redundancy of backwash system at the existing Surface Water Treatment Plant. *(Completed under City of Rapid City Project No. PW04-1447/CIP 50570)*
- **Phase 1B** – Source Water Evaluation for Madison Wells, Infiltration Galleries, and Surface Water Source; and Facility Plans for Madison Wells, Girl Scout Infiltration Gallery, Meadowbrook Infiltration Gallery, Jackson Springs Infiltration Gallery and the preliminary review of the existing Surface Water Treatment Plant. *(Completed under City of Rapid City Project No. PW04-1447/CIP 50570)*
- **Phase 1C** – Design, Bidding, and Construction Phase Services for the recommended Phase 1A alternative. *(Completed under City of Rapid City Project No. PW05-1425.1A/CIP 50570)*
- **Phase 2A** – Completion of the existing Surface Water Treatment Plant and Jackson Springs Infiltration Gallery Facility Plans and provide support to the City's Water Advocacy Task Force.
- **Phase 2B** – Conceptual Design Phase for Water Treatment Plant Upgrades including development of a Source Water Management Plan, development of conceptual designs for the recommended water treatment plant upgrades, and assistance in determining potential funding sources.

The following phases of the project have been approved by the City Council but have not yet been completed:

- **Membrane Prepurchase & Jackson Springs Final Design** – Design of the recommended Jackson Springs Water Treatment Plant including prepurchase of the membrane equipment for both water treatment plants. The design will be substantially based on the conceptual designs prepared under Task 2B.
- **Mountain View Final Design** – Final design of the recommended new Mountain View Water Treatment Plant based substantially on the conceptual designs developed under Task 2B. *(Scope and Engineering Fee to be negotiated prior to startup of this Phase)*
- **Jackson Springs Bid & Construction** – Bid phase, construction administration, and office engineering services associated with the construction of the Jackson Springs Water Treatment Plant. *(Scope and Engineering Fee to be negotiated prior to startup of this Phase)*
- **Mountain View Bid & Construction** – Bid phase, construction administration, and office engineering services associated with the construction of the new Mountain View Water Treatment Plant. *(Scope and Engineering Fee to be negotiated prior to startup of Phase 4B)*

SCOPE OF SERVICES

This contract involves only the Membrane Prepurchase & Jackson Springs Final Design. As such, the Scope of Services for the Membrane Prepurchase & Jackson Springs Final Design as described herein are to be provided by ENGINEER for the OWNER.

1. PROJECT INITIATION AND MANAGEMENT

1.1. Project Kick-off Meeting/Initial Design Team Site Visit

The ENGINEER will conduct a kick-off meeting to review the scope of services and provide an opportunity for the OWNER to provide input regarding the conduct and goals of the project. The meeting will be used to finalize the project schedule, task priorities, and to work out unresolved details and coordination. The meeting will also be used to identify the project team members from the OWNER and will be used to identify the sources and methods of collecting data required by the OWNER and under the OWNER's control. The ENGINEER will also visit the water treatment plant site to collect additional data necessary for the project.

The goals of this initial meeting are to:

- Review project scope/schedule/budget
- Discuss items critical to successfully execute the project
- Specify the lines of communication
- Identify key project issues/OWNER concerns
- Establish tentative team meeting dates for review of the project
- Identify OWNER personnel who are to provide information /services during the work
- Get OWNER input on design items

1.2. Monthly Progress Meetings with City

The ENGINEER will schedule and conduct monthly progress meetings with the OWNER. The meetings will include a review of current and upcoming tasks as well as a review of the project schedule and design/construction budgets. The meetings will also be an opportunity to resolve outstanding issues and plan the project execution for the following month. It has been

assumed that eleven (11) monthly meetings will be required, with four (4) of these meetings held at the OWNER facilities, and seven (7) of these conducted by conference call (and webcast when necessary). The ENGINEER will provide an agenda for each monthly meeting and will prepare and distribute meeting minutes for each meeting.

1.3. Weekly Teleconferences

The ENGINEER will schedule and conduct monthly progress meetings with the OWNER. The teleconferences will provide an opportunity for additional coordination and resolution of design issues and other project tasks. No formal agenda will be prepared for these teleconferences. The ENGINEER will provide (via email) a bulleted summary of items discussed and decisions made during each teleconference. It has been assumed that thirty-five (35) teleconferences will be required.

1.4. Council / Staff Presentations

The ENGINEER will provide up to three (3) two-hour formal presentations to staff and council as determined necessary by the City's Project Manager. It is anticipated that these presentations will include the membrane prepurchase and an overview of the design.

1.5. 'Interested Party' Meeting

Interested Parties have been identified for the expansion of the City's water treatment facilities. To inform these Interested Parties of the goals and progress on the project, the ENGINEER may conduct one (1) Interested Party meeting. This meeting will be at the discretion of the OWNER, and may be substituted with a Council or staff meeting if determined by the OWNER to be appropriate. The schedule for this meeting will be coordinated with the City, but has been assumed to correlate with one of the monthly progress meetings held in Rapid City. The City will be responsible for sending invitations to the Interested Parties and coordinating all aspects of the meeting including the meeting room. The preliminary list of Interested Parties includes:

- South Dakota Game Fish & Parks
- U.S. Bureau of Reclamation
- South Dakota Department of Environment and Natural Resources
- Western Dakota Water Development District
- Rapid City School District
- U.S. Army Corp of Engineers
- Rapid City Growth Management / Operational Staff

1.6. Project Management

Management of the project team will be conducted by the ENGINEER'S designated Project Manager with assistance from others including the Assistant Project Managers, Design Manager, and Task Managers. This task will include general management of the project and project team including coordination of the project team, coordination/monitoring of field activities, and general coordination and communication with OWNER staff.

2. MEMBRANE PREPURCHASE

2.1. Prequalify Potential Membrane Manufacturers

The ENGINEER will prepare a request to the OWNER to prequalify membrane manufacturers and award based on Net Present Worth (rather than strictly low capital cost). This approach is necessary

due to the nature of the technology, and the relationship between capital cost and operational cost. The engineering fee presented assumes this will be acceptable to the OWNER. Under this task, the ENGINEER will identify potential membrane manufacturers and solicit a Statement of Qualifications (SOQ's) from each manufacturer determined to be suitable for the OWNER's project. At a minimum, this prequalification information will include overall capabilities, application of the membrane system to the City of Rapid City, experience, and references. The compiled information will be presented to the OWNER and a short list of 'preselected' membrane manufacturers will be developed and summarized in Technical Memorandum No. 1 (TM-1).

2.2. Membrane Plant Site Visits (w/City Staff)

The ENGINEER will coordinate and attend site visits with the OWNER to existing operational membrane facilities similar to Jackson Springs that include the preselected membrane manufacturer's equipment. It has been assumed that two water treatment plants will be visited within the continental U.S. under this task, and the fee estimate includes travel for two OWNER representatives for two days.

2.3. Develop Design Criteria and Scope for Each System (JS & MV)

The ENGINEER will develop design criteria for each of the preselected membrane systems for the Jackson Springs and Mountain View Water Treatment Plants. This design criteria will be based on existing water quality data and other information reviewed under previous phases of the project. The ENGINEER will coordinate with each membrane manufacturer and discuss design options related to the ancillary equipment and associated costs such as energy requirements, chemical requirements for maintenance and recovery cleans, waste disposal, and membrane replacement costs.

2.4. Prepare Conceptual Drawings for Each Prequalified Manufacturer (JS & MV)

The ENGINEER will prepare conceptual level layout drawings (with cooperation from the manufacturers) for each membrane system for the Jackson Springs and Mountain View Water Treatment Plants. These layouts will be reviewed with the OWNER prior to proceeding to Task 2.5.

2.5. Preliminary Request for Information from Each Manufacturer

The ENGINEER will prepare a request for information from each manufacturer to solicit comments on the design concept, conceptual layouts, and standard equipment offerings.

2.6. Determine Owner Equipment Preferences

The ENGINEER will provide the City with an overview of the preselected manufacturer's standard equipment offerings along with the ENGINEER's preferences and recommendations. The goal of this task is to ensure that only high quality equipment is specified and that adequate competition exists for each component to ensure a cost competitive bid. The ENGINEER and OWNER will participate in a meeting (or teleconference) to determine the OWNER preferences and finalize the equipment list to be included in the prepurchase specifications.

2.7. Proprietary Meetings with Manufacturers

The ENGINEER will coordinate two (2) proprietary meetings with each manufacturer that will allow the manufacturers an opportunity to ask questions and learn more about the project and the competitive bid being prepared by the ENGINEER. It has been assumed that one proprietary meeting will be held at the manufacturer's facilities and the other will be conducted at the OWNER's facilities (within Canada or the Continental U.S.). The fee estimate includes travel for two OWNER representatives for two days with each manufacturer. The purpose of this task is to refine bid documents and increase competition among the manufacturers.

2.8. Prepare 65% Membrane Prepurchase Specifications

The ENGINEER will develop a set of detailed membrane specifications. These technical specifications will include the design criteria specific to each membrane supplier and will be written to allow competitive bidding among the membrane suppliers. While the ENGINEER will review the City's specifications prior to developing the membrane specification package, it will be specifically noted that the City's specifications do not apply to the membrane equipment due to the specialized nature of the equipment. The ENGINEER will include the necessary front end documents and General Conditions (including Supplementary Conditions) in the specification package.

2.9. City Review / Incorporate Comments

The ENGINEER will provide four (4) copies of the 65% membrane prepurchase specifications to the OWNER for review and comment. The OWNER will respond with comments within two (2) weeks of the ENGINEER's submittal. The ENGINEER will provide QA/QC reviews in accordance with their internal quality control program. The ENGINEER will resolve any QA/QC comments and incorporate OWNER comments into the finalized plans and specifications.

2.10. Prepare 100% Membrane Prepurchase Specifications

The ENGINEER will finalize the set of detailed membrane specifications previously described in Task 2.8.

2.11. City Review / Incorporate Final Comments

The ENGINEER will provide four (4) copies of the 100% membrane prepurchase specifications to the OWNER for review and comment. The OWNER will respond with comments within two (2) weeks of the ENGINEER's submittal. The ENGINEER will provide QA/QC reviews in accordance with their internal quality control program and will resolve any QA/QC comments and incorporate OWNER comments into the finalized plans and specifications.

2.12. Prepurchase Bid Phase / Provide Recommendations

The ENGINEER will prepare bid documents, advertisements, addendums, and related cost opinions necessary for the bid phase of the membrane prepurchase. Upon receipt of the bids, the ENGINEER will conduct the Net Present Worth (NPW) analysis and provide recommendations of award to the OWNER. The ENGINEER will attend the bid opening and the council meeting for award of the recommendation.

2.13. Assist in Execution of Prepurchase Agreement

The engineer will provide assistance in execution of the prepurchase agreement including coordination with the membrane manufacturer and providing any assistance to the OWNER's attorney.

3. PREDESIGN PHASE

3.1. Review of Existing Field Conditions

The ENGINEER will review existing field conditions by conducting any additional necessary site visits (with subconsultants) and reviewing any additional water quality data that is available from the

OWNER. This task will include review of existing field conditions by all disciplines necessary to proceed into the design phase of the project.

3.2. Utility Locates & Survey

The ENGINEER will perform, through an approved subcontractor (assumed to be Ferber Engineering), field surveys in sufficient detail to provide a topographic map suitable for detailed design. The survey will show property boundaries and easements necessary for the project and for property acquisition of the Jackson Springs site, as well as the location of all utilities and surface features that are likely to affect the project. The survey will also include three (3) Rapid Creek cross sections for use in the floodplain development permit application modeling that will be required for this project. The OWNER staff will assist in identifying the locations of all known pipelines and structures that may not be accurately reflected on the existing drawings. The limits of the survey are provided in Exhibit D.

3.3. Geotechnical Investigations

Soil borings and laboratory tests will be performed by a subcontractor and submitted to the ENGINEER for key locations at the new water treatment plant site, the raw water pump station site, new intake structure, and along the new pipeline alignment to determine subsurface conditions. It is anticipated that no more than 15 borings are required at the water treatment plant sites, and that no more than fifteen borings are required along the pipeline to Park Drive. The ENGINEER will work with the OWNER to select a qualified geotechnical firm (assumed to be FMG, Inc.) to perform this work. The geotechnical firm will provide a geotechnical report with recommendations for the foundation and design for the new building. The limits of the geotechnical investigations are provided in Exhibit D.

3.4. Coordination for Property Acquisition

The ENGINEER will coordinate with the OWNER's representative responsible for acquisition of the property by providing information developed under the predesign of the project or previous phases of this project. Note that the ENGINEER is not involved in the property acquisition process in any manner.

3.5. Floodplain Study and Floodplain Development Permit

The ENGINEER (or selected subconsultant, assumed to be Ferber Engineering) will conduct a flood study to support a Floodplain Development Permit. Any FEMA related applications or processes are not included (Letter of Map Revision, etc.).

3.6. Bench Scale Analysis / Chemical Titrations

The ENGINEER will develop a protocol and conduct testing for bench scale analysis of coagulants and chemical titrations to accurately determine the necessary addition of chemicals. The coagulant analysis will be based on discussions with the OWNER, but is anticipated to include flocculation formation, settling, and TOC reduction targets. It has been assumed that the OWNER can provide all necessary equipment including a jar testing apparatus if necessary.

3.7. Initiate Permits

The ENGINEER will prepare permit applications for the Erosion and Sediment Control permit, the 404 permit, the Floodplain Development Permit, and South Dakota DOT permits associated with highway crossings.

3.8. Coordination with Rapid Canyon Sanitary Sewer District

The ENGINEER will make contact with the Rapid Canyon Sanitary Sewer District regarding conveyance of residuals produced at the water treatment plant to the OWNER's sanitary sewer system. The fee included herein assumes that Rapid Canyon Sanitary Sewer District does not object to accepting the residuals and includes only coordination with the District relative to connection with the existing sewer system.

3.9. Coordination with SDDOT & Clarkson Mt. View Health Care Facility Expansion

The ENGINEER will assist the OWNER in coordination with the South Dakota Department of Transportation (SDDOT) regarding the reconstruction of Jackson Blvd and the Clarkson Mt. View Health Care Facility regarding their upcoming facility expansion. The ENGINEER will provide information to these entities as directed by the OWNER with regard to the Mountain View Water Treatment Plant expansion and participate in discussions regarding items that may affect the related projects. In completion of this task, the ENGINEER does not assume any involvement or participation in the design of the SDDOT or Clarkson projects.

3.10. Water Rights (Cleghorn & Surface Water Right)

The ENGINEER (or selected subconsultant, assumed to be KAD Engineering) will prepare correspondence and applications necessary to transfer the Cleghorn water right and the diversion water right from existing future use permits to surface water on Rapid Creek.

4. PRELIMINARY DESIGN PHASE

4.1. Prepare 35% Design Plans

The ENGINEER will develop a set of preliminary (35%) plans for the Jackson Springs intake, pump station, and water treatment plant, and associated piping. The plans will be substantially based on the conceptual designs developed under Phase 2B and will be prepared in accordance with the ENGINEER's drafting standards as approved by the City in January 2008.

4.2. Prepare 35% Specifications

The ENGINEER will develop a set of preliminary (35%) technical specifications for the Jackson Springs intake, pump station, and water treatment plant, and associated piping. These technical specifications will include the design criteria specific to the selected membrane equipment awarded in Task 2. While the ENGINEER will review the City's specifications to avoid discrepancies prior to developing the technical specification, it will be specifically noted that the City's specifications do not apply to this bid package due to the specialized nature of the project and to avoid any potential conflicts, interpretations or discrepancies. The ENGINEER will utilize the OWNER's front end documents and will provide General Conditions (including Supplementary Conditions) in the specification package.

4.3. Prepare 35% Pipeline Plans & Specifications

The ENGINEER (or selected subconsultant) will develop a set of preliminary (35%) plans and specifications for the pipeline from the Jackson Springs pump station to Park Drive. The plans and specifications prepared under this project are intended to be a separate bid package from the plans and specifications prepared under Tasks 4.1 and 4.2. The OWNER's standard specifications will govern unless otherwise determined to be appropriate by the OWNER. The ENGINEER (or selected

subconsultant) will utilize the OWNER's front end documents and will provide General Conditions (including Supplementary Conditions) in the specification package.

4.4. Prepare Engineer's Preliminary (35%) Opinion of Probable Cost

The ENGINEER will provide a preliminary opinion of cost for the proposed water treatment plant building, pump station, intake structure, and pipelines based on the 35% plans and specifications. The preliminary opinion of cost is based on the ENGINEER's experience and judgment and will be used to establish a budget for the project and to make decisions for final design that may include cost considerations. The opinion of cost may not reflect the actual value of bids received based on the final bid documents, since the ENGINEER does not have control over the factors used by contractors in preparing their bids.

4.5. City Review

The ENGINEER will provide four (4) copies of the 35% plans and specifications to the OWNER for review and comment. The OWNER will respond with comments within two (2) weeks of the ENGINEER's submittal. The ENGINEER will provide QA/QC reviews in accordance with their internal quality control program. The ENGINEER will resolve any QA/QC comments and incorporate OWNER comments into the 65% plans and specifications.

5. FINAL DESIGN PHASE

5.1. Prepare 65% Design Plans

The ENGINEER will develop a set of 65% plans for the Jackson Springs intake, pump station, and water treatment plant, and associated piping. The plans will be substantially based on the preliminary designs developed under Task 4 and will be prepared in accordance with the ENGINEER's drafting standards as approved by the City in January 2008.

5.2. Prepare 65% Specifications

The ENGINEER will develop a set of 65% technical specifications for the Jackson Springs intake, pump station, and water treatment plant, and associated piping. These technical specifications will be substantially based on the plans and specifications developed under Task 4. The OWNER's front end documents and General Conditions (including Supplementary Conditions) will be provided in the specification package.

5.3. Prepare 65% Pipeline Plans & Specifications

The ENGINEER (or selected subconsultant) will develop a set of 65% plans and specifications for the pipeline from the Jackson Springs pump station to Park Drive. The plans and specifications will be substantially based on the plans and specifications prepared under Task 4. The OWNER's standard specifications will govern unless otherwise determined to be appropriate by the OWNER. The ENGINEER (or selected subconsultant) will utilize the OWNER's front end documents and will provide General Conditions (including Supplementary Conditions) in the specification package.

5.4. Prepare Updated Engineer's Opinion of Probable Cost (65% design)

The ENGINEER will provide an updated opinion of probable cost for the proposed water treatment plant building, pump station, intake structure, and pipelines based on the 65% plans and specifications. The opinion of cost is based on the ENGINEER's experience and judgment and will be used to establish a budget for the project and to make decisions for final

design that may include cost considerations. The opinion of cost may not reflect the actual value of bids received based on the final bid documents, since the ENGINEER does not have control over the factors used by contractors in preparing their bids.

5.5. Building / Fire Department / SDDENR Coordination

The ENGINEER will coordinate with the Rapid City Building and Fire Departments to ensure adopted codes are used in the design. The ENGINEER will also conduct a preliminary meeting with SDDENR to review the 65% design. The ENGINEER will prepare submittals as required for approval by each of these departments.

5.6. City Review & QA/QC

The ENGINEER will provide five (5) copies of the 65% plans and specifications to the OWNER for review and comment. The OWNER will respond with comments within three (3) weeks of the ENGINEER's submittal. The ENGINEER will provide QA/QC reviews in accordance with their internal quality control program. The ENGINEER will resolve any QA/QC comments and incorporate OWNER comments into the finalized plans and specifications.

5.7. Prepare 100% Design Plans

The ENGINEER will develop a set of 100% plans for the Jackson Springs intake, pump station, and water treatment plant, and associated piping. The plans will be substantially based on the 65% designs developed under Tasks 5.1 and 5.2 and will be prepared in accordance with the ENGINEER's drafting standards as approved by the City in January 2008.

5.8. Prepare 100% Specifications

The ENGINEER will develop a set of 100% technical specifications for the Jackson Springs intake, pump station, and water treatment plant, and associated piping. These technical specifications will be substantially based on the 65% plans and specifications developed under Tasks 5.1 and 5.2. The OWNER's front end documents and General Conditions (including Supplementary Conditions) will be provided in the specification package.

5.9. Prepare 100% Pipeline Plans & Specifications

The ENGINEER (or selected subconsultant) will develop a set of 100% plans and specifications for the pipeline from the Jackson Springs pump station to Park Drive. The plans and specifications will be substantially based on the plans and specifications prepared under Task 5.3. The OWNER's standard specifications will govern unless otherwise determined to be appropriate by the OWNER. The ENGINEER (or selected subconsultant) will utilize the OWNER's front end documents and will provide General Conditions (including Supplementary Conditions) in the specification package.

5.10. Final City Review

The OWNER will conduct a final review of the 100% plans and specifications and the ENGINEER will provide QA/QC reviews in accordance with their internal quality control program. The OWNER will provide any final comments within three (3) weeks of the submittal. The ENGINEER will resolve any QA/QC comments and incorporate OWNER comments into the finalized plans and specifications.

5.11. Submit to DENR

The ENGINEER will submit the 100% plans and specifications as necessary for the South Dakota

DENR in this task. This will involve preparing a drawing submittal in the format required by the South Dakota DENR, and meeting with their staff to review the submittal. Subsequent to the review, all special requirements that are required for approval will be included into these final bid documents.

5.12. 11-6-19 Review & Planning Commission Meeting

The ENGINEER will prepare submittals for the SDCL 11-6-19 review process and attend one (1) planning commission meeting. The ENGINEER's subconsultant will assist in preparing documents for this submittal. In the event that comments are received at the planning commission meeting, one (1) revision and resubmittal has been included in this scope of services. The OWNER will attempt to expedite this review process by submitting the 65% design rather than the 100% design if possible.

5.13. Provide Bid Ready Documents

The ENGINEER will revise and finalize the drawings and specifications incorporating the OWNER's comments, and prepare final sealed plans and specification for inclusion in the final bid documents. The ENGINEER will then make any final corrections to prepare "Bid-Ready" documents ready for advertisement. Copies will be distributed to the OWNER and contractors under the bid phase of the project.

5.14. Prepare Final Engineers Opinion of Probable Cost

The ENGINEER will provide a final opinion of probable cost for the proposed water treatment plant building, pump station, intake structure, and pipelines based on the 100% plans and specifications. The final opinion of cost is based on the ENGINEER's experience and judgment and will be used to establish a budget for the project and to make decisions for final design that may include cost considerations. The opinion of cost may not reflect the actual value of bids received based on the final bid documents, since the ENGINEER does not have control over the factors used by contractors in preparing their bids.

6. FINANCING & FUNDING ASSISTANCE

6.1. Coordination with Rate Study

The ENGINEER will coordinate with the OWNER (and the OWNER's Consultant as directed) by providing information required for a Rate Study that is currently underway. This information shall be limited to Opinions of Probable Cost and other information collected with regard to the grant and SRF applications in Task 6.2 and 6.3. It has been assumed that no cost opinions will be developed outside of the scope of services outlined herein.

6.2. Grant Applications

The ENGINEER will prepare and submit up to three (3) grant applications for the OWNER to attempt to obtain funding for the project. The OWNER will review and execute each application prior to submittal. While it has been assumed that the ENGINEER will complete all paperwork associated with these applications, no travel or trips have been included in the scope of work for this task. It has been assumed that all information necessary to complete this task will be compiled under Task 6.3, or was completed under previous phases (e.g. facility plans, etc.). No additional environmental assessments, financial analysis, or design deliverables have been included in the scope of work.

6.3. SRF Loan Applications & Public Hearings

The ENGINEER will prepare and submit up to two (2) SRF loan applications for the OWNER to

attempt to obtain funding assistance for the project. The OWNER will review and execute each application prior to submittal. To accomplish this task, the ENGINEER will conduct a 4 to 5 day site visit to meet with the OWNER's Finance Office, the OWNER's water operations department, and the West Dakota Water Development District to compile financial and critical information related to the applications. The ENGINEER will prepare any documents required to add the OWNER to the State Water Plan, and prepare all applications including compiling of financial information. It has been assumed that the existing facility plans and conceptual documents are suitable for this application, and when combined with the environmental assessment (to be conducted by West Dakota Water Development District) constitute a complete SRF submittal. Once submitted, it is assumed that the ENGINEER will need to make two (2) trips to Pierre, South Dakota to attend public hearings on each of the applications.

6.4. City Council Meeting

The ENGINEER will present one (1) update on the funding for this project to the City Council as requested by the OWNER.

RESPONSIBILITIES OF OWNER

The OWNER shall provide the following:

Assistance by placing at ENGINEER's disposal all available information pertinent to the assignment including historical water use data, water rights documentation, water quality data, survey data, geotechnical reports, as-built drawings, physical data on existing facilities, and relevant correspondence as required and/or requested by ENGINEER. ENGINEER shall rely on information made available by the OWNER as accurate without independent verification. In addition, the OWNER shall assist in schedule coordination of meetings, workshops, and field services with City to ensure the objectives can be completed in a timely manner.

DELIVERABLES

The OWNER will be provided deliverables as outlined in the Scope of Services. Unless otherwise specified, any draft copies for review by the OWNER will be provided in electronic (.pdf) format. Specifications will be provided in Word Format and Drawings will be provided in Autocad 2008 format (as developed by the ENGINEER). One final electronic copy (on CD) and five final hard copies will be provided.

Reuse of Documents: All documents prepared or furnished by ENGINEER (and ENGINEER's independent professional associates or 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. Assuming a notice to proceed by August 19, 2008, the scope of services will be completed by August 1, 2009 unless otherwise agreed upon in writing by both parties. All OWNER review of documents will be accomplished within a period of three weeks or less, unless otherwise specified in the scope of services.

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 **Exhibit A**. Such rates include overhead and profit and are effective for the entire calendar year as shown on the Exhibit.
 - 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 **Exhibit B**. Engineer's Standard rates are updated annually on the first day of each calendar year.
 - 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 One Million Seven Hundred Forty-Five Thousand Five-Hundred Fifty-Two Dollars (\$1,745,552) without written approval of OWNER. A summary of the personnel effort is provided in **Exhibit C**.
3. ENGINEER shall not begin work on any phase of the project without written authorization by the OWNER.

TERMS AND CONDITIONS

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

BURNS & MCDONNELL ENGINEERING CO.

ACCEPTED:

By _____

Title Senior Vice President

Date _____

ATTEST:

By _____

Title _____

Date _____

CITY OF RAPID CITY

ACCEPTED:

By _____

Title Mayor

Date _____

ATTEST:

By _____

Title Finance Officer

Date _____

REVIEWED:

By _____

Title Project Manager

Date _____

EXHIBIT A: SCHEDULE OF HOURLY PROFESSIONAL SERVICE BILLING RATES

2008 Schedule of Hourly Professional Service Billing Rates

Position Classification	Classification Level	Hourly Billing Rate
General Office	5	\$54.00
Technician	6	\$58.00
Assistant	7	\$68.00
	8	\$94.00
	9	\$104.00
Staff	10	\$114.00
	11	\$126.00
Senior	12	\$136.00
	13	\$150.00
Associate	14	\$162.00
	15	\$174.00
Principal	16	\$179.00
	17	\$187.00

RAPIDCITY08A

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 through December 31, 2008, and are subject to revision thereafter.
3. For services rendered by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 10%.
4. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt.

EXHIBIT A (cont.): SCHEDULE OF HOURLY PROFESSIONAL SERVICE BILLING RATES

2009 Schedule of Hourly Professional Service Billing Rates

Position Classification	Classification Level	Hourly Billing Rate
General Office	5	\$58.00
Technician	6	\$62.00
Assistant	7	\$73.00
	8	\$101.00
	9	\$111.00
Staff	10	\$122.00
	11	\$135.00
Senior	12	\$146.00
	13	\$161.00
Associate	14	\$173.00
	15	\$186.00
Principal	16	\$192.00
	17	\$198.00

RAPIDCITY09A

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 from January 1, 2009 through December 31, 2009, and are subject to revision thereafter.
3. For services rendered by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 10%.
4. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt.

EXHIBIT B - SCHEDULE OF REIMBURSABLE EXPENSES

Schedule of Reimbursable Expenses		
Description	Unit Cost	
Personal Mileage:	\$0.59	
Reproduction/Printing:	8.5"x 11" Copies White	\$0.09/sheet
	22" x 34" Drawings White Bond	\$0.93/sheet
	22" x 34" Drawings Mylar	\$9.90/sheet
	8.5"x 11" Copies Color	\$1.00/sheet
	Color Plotting	\$7.25/SF
Long Distance Telephone:	Cost	
Postage:	Cost	
Travel Expenses:		
Airfare:	Cost	
Lodging:	Cost	
Meals:	Cost	
Rental Car:	Cost	
Vehicle Expense:		
Sedan (4-door)	\$58/day + \$0.29/mile	
SUV – 4WD	\$65/day + \$0.35/mile	

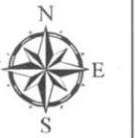
Total of billable hours plus reimbursable expenses shall not exceed the maximum Cost Reimbursable Not to Exceed Amount allowed under the contract, without a written amendment executed by the parties.

PERSONNEL EFFORT

CITY OF RAPID CITY

JACKSON SPRINGS WTP DESIGN & MEMBRANE PREPURCHASE

ACTIVITY NAME	Total BMCD Labor		Total Subconsultants	Direct Expenses	Total Costs
	Hours	Cost			
1.0 - PROJECT INITIATION AND MANAGEMENT	1,308	\$188,200	\$18,040	\$14,437	\$220,677
1.1 Project Kick-Off Meeting / Initial Design Team Site Visit	46	\$6,500	\$880	\$517	\$7,897
1.2 Monthly Progress Meetings With City (11)	280	\$41,008	\$5,720	\$3,271	\$49,999
1.3 Weekly Teleconferences (35)	104	\$16,240	\$2,640	\$1,322	\$20,202
1.4 Council/Staff Presentations (3)	76	\$11,368	\$0	\$796	\$12,164
1.5 Stakeholder Meeting (1)	34	\$5,372	\$0	\$376	\$5,748
1.6 Project Management	768	\$107,712	\$8,800	\$8,156	\$124,668
2.0 - MEMBRANE PREPURCHASE	1570	\$214,724	\$3,080	\$15,246	\$233,050
2.1 Prequalify Potential Membrane Manufacturers	52	\$6,744	\$0	\$472	\$7,216
2.2 Membrane Plant Site Visits (w/ City Staff)	68	\$9,880	\$0	\$692	\$10,572
2.3 Develop Design Criteria and Scope for Each System (JS & MV)	132	\$18,504	\$0	\$1,295	\$19,799
2.4 Prepare Conceptual Drawings for Each Prequalified Manufacturer (JS & MV)	240	\$31,808	\$0	\$2,227	\$34,035
2.5 Preliminary Request for Information from Each Manufacturer	52	\$7,256	\$0	\$508	\$7,764
2.6 Determine Owner Equipment Preferences	34	\$4,540	\$0	\$318	\$4,858
2.7 Proprietary Meetings with Manufacturers	144	\$20,704	\$0	\$1,449	\$22,153
2.8 Prepare 65% Membrane Prepurchase Specifications	410	\$56,148	\$1,320	\$4,023	\$61,491
2.9 City Review/Incorporate Comments	40	\$5,872	\$0	\$411	\$6,283
2.10 Prepare 100% Membrane Prepurchase Specifications	252	\$32,872	\$1,320	\$2,393	\$36,585
2.11 City Review/Incorporate Final Comments	60	\$8,456	\$0	\$592	\$9,048
2.12 Prepurchase Bid Phase / Provide Recommendation	58	\$7,788	\$440	\$576	\$8,804
2.13 Assist in Execution of Prepurchase Agreement	28	\$4,152	\$0	\$291	\$4,443
3.0 - PREDESIGN PHASE	534	\$71,476	\$129,345	\$19,057	\$219,878
3.1 Review of Existing Field Conditions	52	\$7,416	\$28,880	\$2,541	\$38,837
3.2 Utility Locates & Survey	24	\$3,312	\$54,595	\$4,053	\$61,960
3.3 Geotechnical Investigations	76	\$10,072	\$23,650	\$2,361	\$36,083
3.4 Coordination for Property Acquisition	32	\$4,752	\$440	\$363	\$5,555
3.5 Floodplain Study and Floodplain Development Permit	40	\$5,392	\$12,980	\$1,286	\$19,658
3.6 Bench Scale Analysis / Chemical Titrations	86	\$11,300	\$0	\$5,791	\$17,091
3.7 Initiate Permits	128	\$15,904	\$2,200	\$1,267	\$19,371
3.8 Coordination with Rapid Canyon Sanitary Sewer District	20	\$2,936	\$0	\$206	\$3,142
3.9 Coordination with SDDOT (Jackson Blvd.) and Clarkson Mt. View Health Care Facility Expansion	46	\$6,516	\$0	\$456	\$6,972
3.10 Water Rights (Cleghorn & Surface Water Right)	30	\$3,876	\$6,600	\$733	\$11,209
4.0 - PRELIMINARY DESIGN PHASE	1568	\$205,696	\$20,042	\$18,802	\$244,540
4.1 Prepare 35% Design Plans	916	\$116,424	\$0	\$8,150	\$124,574
4.2 Prepare 35% Specifications	532	\$71,688	\$0	\$5,018	\$76,706
4.3 Prepare 35% Pipeline Plans & Specifications	76	\$11,064	\$19,162	\$5,116	\$35,342
4.4 Prepare Engineer's Preliminary (35%) Opinion of Probable Cost	34	\$4,924	\$880	\$406	\$6,210
4.5 City Review	10	\$1,596	\$0	\$112	\$1,708
			\$0		
5.0 - FINAL DESIGN PHASE	4368	\$569,344	\$90,794	\$64,210	\$724,348
5.1 Prepare 65% Design Plans	1,434	\$182,196	\$0	\$12,754	\$194,950
5.2 Prepare 65% Specifications	636	\$86,232	\$0	\$6,036	\$92,268
5.3 Prepare 65% Pipeline Plans & Specifications	124	\$17,624	\$36,300	\$6,775	\$60,699
5.4 Prepare Updated Engineer's Opinion of Probable Cost (65% Design)	34	\$4,924	\$880	\$406	\$6,210
5.5 Building/Fire Dept/SDDENR Coordination	74	\$10,188	\$0	\$713	\$10,901
5.6 City Review	32	\$4,672	\$0	\$327	\$4,999
5.7 Prepare 100% Design Plans	1,070	\$135,724	\$0	\$9,501	\$145,225
5.8 Prepare 100% Specifications	460	\$60,104	\$0	\$4,207	\$64,311
5.9 Prepare 100% Pipeline Plans & Specifications	124	\$17,432	\$52,294	\$19,881	\$89,607
5.10 Final City Review	84	\$11,208	\$0	\$785	\$11,993
5.11 Submit to DENR	24	\$3,456	\$0	\$242	\$3,698
5.12 11-619 Review & Meetings	96	\$13,216	\$1,320	\$1,018	\$15,554
5.13 Provide Bid Ready Documents	140	\$17,352	\$0	\$1,215	\$18,567
5.14 Prepare Final Engineers Opinion of Probable Cost	36	\$5,016	\$0	\$351	\$5,367
6.0 - FINANCING & FUNDING ASSISTANCE	516	\$70,392	\$0	\$4,927	\$75,319
6.1 Coordination with Rate Study	24	\$3,264	\$0	\$228	\$3,492
6.2 Grant Applications (3)	204	\$27,400	\$0	\$1,918	\$29,318
6.3 SRF Loan Applications (2) & Public Hearings	264	\$36,008	\$0	\$2,521	\$38,529
6.4 City Council Meeting	24	\$3,720	\$0	\$260	\$3,980
Travel Expenses					\$27,740
TOTAL ENGINEERING FEE (PREPURCHASE/DESIGN PHASE)					\$1,745,552



JACKSON SPRINGS WATER TREATMENT PLANT

PROPOSED LOCATION AT CLEGHORN SCHOOL

CITY OF RAPID CITY, SD

CITY PROJECT NO. ?

et Title:

SURVEY
 LIMITS
 YOUR

et:



BURNS & MCDONNELL ENGINEERING COMPANY, INC.

TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

Project: MEMBRANE PREMISES & JACKSON SPRINGS DESIGN Date of Letter, Proposal or Agreement: _____

Client: CITY OF RAPID CITY, SOUTH DAKOTA

1. SCOPE OF SERVICES

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

2. PAYMENTS TO BMCD

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

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

3. INSURANCE

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

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

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

4. INDEMNIFICATION

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

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

(continued on reverse side)

Client Signature: _____

5. PROFESSIONAL RESPONSIBILITY - LIMITATION OF REMEDIES

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

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

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 \$400,000 or the compensation paid for BMCD's services.

\$1,000,000 OR BMCD'S INSURANCE LIMIT AS STATED IN SECTION 3.
D. These mutually negotiated obligations and remedies stated in this Paragraph 5, Professional Responsibility - Limitation of Remedies, are the sole and exclusive obligations of BMCD and remedies of Client, whether liability of BMCD is based on contract, warranty, strict liability, tort (including negligence), indemnity or otherwise.

6. PERIOD OF SERVICE AND SCHEDULE

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

7. COMPUTER PROGRAMS OR MODELS

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

8. ELECTRONIC MEDIA AND DATA TRANSMISSIONS

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

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

9. DOCUMENTS

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

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

10. ESTIMATES, SCHEDULES, FORECASTS, AND PROJECTIONS

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

11. POLLUTION

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

12. ON-SITE SERVICES

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

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

13. CHANGES

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

14. TERMINATION

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

15. DISPUTES, NEGOTIATIONS, MEDIATION

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

~~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.~~ MAL

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 48th 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.~~ SOUTH DAKOTA MAL

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 -