

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

Date: October 28, 2008

Project Name & Number: On-Call Support Services; PW08-1762B

CIP #: 50745

**Project Description:** On-call support services for implementation, modification, or use of the water and sewer geodatabases, hydraulic models and computer maintenance management system developed under the Utility System Master Plan.

**Consultant:** Burns & McDonnell Engineering Co., Inc.

Original Contract Amount:	Not to Exceed \$25,000.00	Original Contract Date:	October 20, 2008	Original Completion Date:	October 20, 2010
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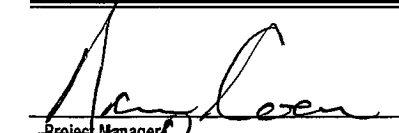
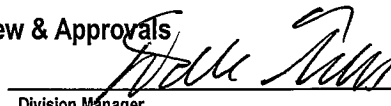

**Amendment Number:**

**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	Comments
\$12,500.00	833	4223	Sewer Enterprise Fund
\$12,500.00	933	4223	Water Enterprise Fund
\$25,000.00	<b>Total</b>		

<b>Agreement Review &amp; Approvals</b>			
	10/21/08		10-21-08
<small>Project Manager</small>	<small>Date</small>	<small>Division Manager</small>	<small>Date</small>
	10/21/08		
<small>Department Director</small>	<small>Date</small>	<small>City Attorney</small>	<small>Date</small>

**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 – On-Call Support Services  
City of Rapid City Project No. PW08-1762B**



**ENGINEER: Burns & McDonnell Engineering Co., Inc.**

# PROFESSIONAL ENGINEERING SERVICES CONTRACT

October 20, 2008

Project: Rapid City On-Call Support Services  
City of Rapid City Project No. PW08-1762B

## Owner Information:

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

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

## ENGINEER:

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

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

## SCOPE OF SERVICES

Burns & McDonnell Engineering Company, Inc., (hereinafter ENGINEER) recently completed the development of geodatabases and hydraulic modeling for the City of Rapid City's water and sewer infrastructure as part of the Utility System Master Plan. The City is currently implementing use of these tools. This project is to provide on-call support services during the implementation phase to the extent requested by the City of Rapid City, but not to exceed the amount of this contract without prior notification. The City (hereinafter OWNER) will provide the ENGINEER with office space and access to the hydraulic models, geodatabases, and any other items required to provide this support.

As such, the Scope of Services as described herein are to be provided by ENGINEER for the OWNER.

1. **Support Services** – The ENGINEER will respond to inquiries by the City and provide assistance in implementing, modifying, or using the tools developed under the Utility System Master Plan project. This scope of services will be completed on an on-call basis and does not include any specific deliverables unless otherwise agreed to at the time of the service request.

## RESPONSIBILITIES OF OWNER

The OWNER shall provide the following:

Assistance by placing at ENGINEER's disposal all available information pertinent to the assignment 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 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.

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. The Time of Service will end at the time the maximum fee is reached, but will not exceed Two Years.

## 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 subject to revision as indicated 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, company vehicle usage, and personal vehicle mileage, 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.

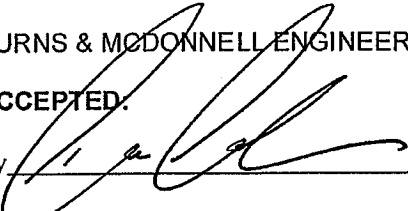
- d. For professional services rendered by others as subcontractor(s) to ENGINEER will be billed at the cost to ENGINEER plus 10 percent.
- 2. Total payment for the Scope of Services described herein shall not exceed Twenty-Five Thousand Dollars (\$25,000) without written approval of OWNER.
- 3. ENGINEER shall not begin work on any phase of the project without written authorization by the OWNER.

**TERMS AND CONDITIONS**

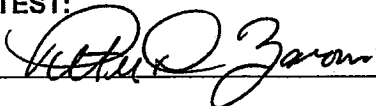
The attached Terms and Conditions for Professional Services is incorporated and made a part of this Agreement.

BURNS & MCDONNELL ENGINEERING CO.

**ACCEPTED:**

By   
 Title Principal-In-Charge  
 Date 10/20/08

**ATTEST:**

By   
 Title Principal  
 Date 10-20-08

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 for services 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

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**Notes:**

1. Position classifications listed above refer to the firm's internal classification system for employee compensation. For example, "Associate", "Senior", etc., refer to such positions as "Associate Engineer", "Senior Architect", etc.
2. The hourly rates shown above are effective for services through 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:	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">8.5"x 11" Copies White</td> <td style="text-align: right;">\$0.09/sheet</td> </tr> <tr> <td>22" x 34" Drawings White Bond</td> <td style="text-align: right;">\$0.93/sheet</td> </tr> <tr> <td>22" x 34" Drawings Mylar</td> <td style="text-align: right;">\$9.90/sheet</td> </tr> <tr> <td>8.5"x 11" Copies Color</td> <td style="text-align: right;">\$1.00/sheet</td> </tr> <tr> <td>Color Plotting</td> <td style="text-align: right;">\$7.25/SF</td> </tr> </table>	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
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.



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

Project: \_\_\_\_\_

Date of Letter, Proposal or Agreement: \_\_\_\_\_

Client: CITY OF RAPID CITY, SOUTH DAKOTA  
1. SCOPE OF SERVICES

Client Signature: \_\_\_\_\_  
5. PROFESSIONAL RESPONSIBILITY - LIMITATION OF REMEDIES

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.

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.

**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. 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.~~ MAL

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.

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.

**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.** MAL

~~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.~~ MAL

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.

**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.

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.

**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.

**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.

**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. 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.** MAL

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~~ SOUTH DAKOTA, without regard to any conflicts of law provisions. Parties agree to submit to the exclusive venue and jurisdiction of the ~~40<sup>th</sup> 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, 7<sup>TH</sup> JUDICIAL CIRCUIT, PENNINGTON COUNTY. 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 -