

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

Date: May 20, 2009

Project Name & Number: Water Reclamation Facility Non-Potable Water System Replacement **CIP #:** 50748
#WRF08-1770

Project Description: Design and construction of a non-potable water system to supply operational and process water requirements for the City of Rapid City Water Reclamation Facility,

Consultant: HDR Engineering, Inc.

Original Contract Amount: \$89,802.00

Original Contract Date: June 15, 2009

Original Completion Date: Mar. 1, 2010

Addendum No:

Amendment Description:

Current Contract Amount: _____

Current Completion Date: _____

Change Requested: _____

New Contract Amount: _____ **\$0.00**


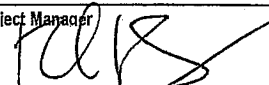
New Completion Date: _____

Funding Source This Request:

Amount	Dept.	Line Item	Fund	Comments
\$89,802.00	833	4223	604	Wastewater Replacement/Improvement
\$89,802.00	Total			

NOTE: Funding to be reimbursed to 833 from Clean Water State Revolving Fund (SRF) program.

Agreement Review & Approvals


Project Manager

Department Director

JUN 2 2009

Date

6-3-09

Date


Division Manager

6-3-09

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
		Y N
Appropriation		Y N
Cash Flow		Y N

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

As Modified by the Parties Hereto (all changes shown in redline/strike-out format)

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, No. E-001, 2002 Edition.

Issued and Published Jointly by



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - SERVICES OF ENGINEER	1
1.01 Scope	1
ARTICLE 2 - OWNER'S RESPONSIBILITIES	1
2.01 General.....	1
ARTICLE 3 - SCHEDULE FOR RENDERING SERVICES	1
3.01 Commencement	1
3.02 Time for Completion	1
ARTICLE 4 - INVOICES AND PAYMENTS.....	2
4.01 Invoices.....	2
4.02 Payments.....	2
ARTICLE 5 - OPINIONS OF COST	2
5.01 Opinions of Probable Construction Cost	2
5.02 Reserved	2
5.03 Opinions of Total Project Costs.....	2
ARTICLE 6 - GENERAL CONSIDERATIONS	2
6.01 Standards of Performance	2
6.02 Design without Construction Phase Services	3
6.03 Use of Documents.....	3
6.04 Insurance.....	4
6.05 Suspension and Termination.....	4
6.06 Controlling Law.....	5
6.07 Successors, Assigns, and Beneficiaries.....	5
6.08 Dispute Resolution.....	6
6.09 Environmental Condition of Site	6
6.10 Indemnification and Mutual Waiver	6
6.11 Miscellaneous Provisions.....	7
ARTICLE 7 - DEFINITIONS	8
7.01 Defined Terms	8
ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS.....	9
8.01 Exhibits Included	9
8.02 Total Agreement	9
8.03 Designated Representatives	9

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of June 15, 2009 ("Effective Date") between

City of Rapid City, South Dakota ("Owner") and

HDR Engineering, Inc. ("Engineer").

Owner intends to: Construct Water Reclamation Facility Non-Potable Water System at the Water Reclamation Facility Replacement; WRF 08-1770/CIP No. 50748.

____ ("Project").

Owner and Engineer agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 - SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not

to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 4 - INVOICES AND PAYMENTS

4.01 Invoices

A. *Preparation and Submittal of Invoices.*

Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt.

4.02 Payments

A. *Application to Interest and Principal.*

Payment will be credited first to any interest owed to Engineer and then to principal.

B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then:

1. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion. Owner shall promptly notify Engineer of the disputed item and request either clarification or that remedial action be taken. After a disputed item has been settled, Engineer shall include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. Engineer's opinions of probable Construction Cost 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 construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' 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 as provided in Exhibit B.

5.02 Reserved

5.03 Opinions of Total Project Costs

A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject 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.

B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject

to reasonable, timely, and substantive objections by Owner.

D. Subject to the standard of care set forth in paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. Engineer and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.

F. Not Used

G. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

H. The General Conditions for any construction contract documents prepared hereunder are to be the City of Rapid City's General Conditions for Public Works Construction, as noted by specific reference in Exhibit J.

I. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

K. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

6.02 Design without Construction Phase Services

A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the Bidding or Negotiating Phase; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Owner waives any claims against the Engineer that may be connected in any way thereto.

6.03 Use of Documents

A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

C. 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 transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Owner shall not create any rights in third parties.

F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 Insurance

A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the General Conditions.

D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

E. Not Used.

F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 Suspension and Termination

A. Suspension.

By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

B. *Termination.* The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the

terms hereof through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Upon payment due for services performed prior to the effective date of termination, Engineer shall deliver or otherwise make available to Owner all documents, data, drawings, specifications, reports, estimates, summaries, notes, and other information and materials as may have been

produced or accumulated by Engineer in performing this Agreement.

D. Payments Upon Termination.

1. In the event of any termination under paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of paragraph 6.03.E.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.07 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or

discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. 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.

3. Owner agrees that the substance of the provisions of this paragraph 6.07.C shall appear in the Contract Documents.

6.08 Dispute Resolution

A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.

B. If the parties fail to resolve a dispute through negotiation under paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 Environmental Condition of Site

A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that

doing so is required by applicable Laws or Regulations.

D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.

F. 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 (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 Indemnification and Mutual Waiver

A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including

the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by Owner and Engineer in Exhibit I, "Allocation of Risks," if any.

B. Indemnification by Owner. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

C. Environmental Indemnification. In addition to the indemnity provided under paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

D. Percentage Share of Negligence. To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any

cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

E. Mutual Waiver. To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 Miscellaneous Provisions

A. 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, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. Survival. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

C. Severability. 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.

D. Waiver. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement. One or more waivers by either party of any provision, term, condition or covenant shall not be constructed as a waiver of a subsequent breach of the same by the other party

E. Accrual of Claims. To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation

shall commence, no later than the date of Substantial Completion.

ARTICLE 7 - DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract," prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition):

1. *Additional Services*--The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.

2. *Basic Services*--The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 1, of this Agreement.

3. *Construction Cost*--The cost to Owner of those portions of the entire Project designed or specified by Engineer. 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 the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

4. *Constituent of Concern*--Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or

standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

5. *Consultants*--Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.

6. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

7. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

8. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

9. *Reimbursable Expenses*--The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

10. *Resident Project Representative*--The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

11. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

12. *Total Project Costs*--The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting,

insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

individuals to act 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 Project on behalf of each respective party.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

- A. Exhibit A, "Engineer's Services," consisting of 7 pages.
- B. Exhibit B, "Owner's Responsibilities," consisting of 2 pages.
- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 2 pages (+ 2 pages of appendices).
- D. Exhibit D, Reserved.
- E. Exhibit E, Reserved.
- F. Exhibit F, Reserved.
- G. Exhibit G, "Insurance," consisting of 1 page.
- H. Exhibit H, Reserved.
- I. Exhibit I, Reserved.
- J. Exhibit J, "Special Provisions," consisting of 1 page.
- K. Exhibit K, "Amendment to Standard Form of Agreement," consisting of 1 page.

8.02 Total Agreement

- A. This Agreement (consisting of pages 1 to 10 inclusive, together with the exhibits identified above) 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 based on the format of Exhibit K to this Agreement.

8.03 Designated Representatives

- A. With the execution of this Agreement, Engineer and Owner shall designate specific

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

By:

Title: Mayor

Date Signed:

Engineer:

HDR Engineering, Inc.

By: William W. Brinker

Title: Senior Vice President

Date Signed:

Engineer License or Certificate No. 3109

State of: South Dakota

Attest:

By:

Title: City Finance Officer

Date Signed:

Address for giving notices:

Engineering Division

300 E. 6th Street

Rapid City, SD 57701

Designated Representative (see paragraph 8.03.A):

Dale Tech

Title: City Engineer

Phone Number: (605) 394-4154

Facsimile Number: (605) 355-3083

E-Mail Address: dale.tech@rcgov.org

Address for giving notices:

3820 Jackson Blvd, Suite 1

Rapid City, SD 57702

Designated Representative (see paragraph 8.03.A):

Allan D. Erickson

Title: Project Manager

Phone Number: 605 977 7740

Facsimile Number: 605 977 7747

E-Mail Address: Allan.Erickson@hdrinc.com

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT A**, consisting of seven pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

Engineer's Services

PART 1 -- SCOPE OF WORK

Professional services consist of five tasks: Preliminary Design Services, Final Design Services, Bidding Services, Basic Construction Services, and Expanded Construction Services.

TASK 1 - PRELIMINARY DESIGN SERVICES:

This task consists of all services necessary to take the project from beginning through the Preliminary Design submittal stage, and may include the following itemized services.

1.1 Kick-off Conference: The consultant shall meet with City staff to establish and refine the project scope and program, including budget and schedule considerations. The consultant shall prepare an agenda, take minutes, and distribute minutes to participants.

1.2 Conduct a complete study and review of the existing facilities and conditions. Review background information listed in the Request for Proposals, and other resources including plans, specifications, and reports from the construction of the existing facilities as necessary to determine the location, size, and extent of all relevant existing equipment, systems, and structures that may be affected by the project.

1.3 In the performance of this and all tasks for this project, the consultant shall employ such specialists as may be required to evaluate, study, and assist in design for special considerations of the project if such professional expertise is not available in the consultant's organization. Employment of any such specialists is part of the scope of services to be provided under this contract, except for specialists described in Task 1.6 (geotechnical engineering services). *Not anticipated nor included in estimated fee.*

1.4 Prepare the Project Design Report: The report shall present preliminary (30%) plans, schematic designs, and narrative sufficient to describe the proposed work including mechanical, electrical, structural, architectural, and utility systems. The report shall establish and indicate all project design criteria and standards including design assumptions, design life, and design criteria. The report shall establish flow requirements, pipe sizes, an assessment of water quality standards for existing and anticipated future uses, and requirements and recommendations for housing the proposed water supply equipment including considerations for power, light, access, & HVAC. The report shall include a preliminary building code analysis for all building related work including consideration of construction types, occupancy classification(s) and exit requirements.

Provide three (3) copies of the Project Design Report to the City of Rapid City's project manager for review and comment.

1.5 Prepare a preliminary opinion of probable construction costs for the project.

1.6 Provide recommendations on the scope or extent of any geotechnical engineering reviews or investigations as may be necessary to complete design. It is anticipated that geotechnical information from prior projects at the Water Reclamation Facility will provide adequate information to accomplish this project, however, if such services are needed the consultant shall assist in establishing the scope of work and in obtaining and proposals. The geotechnical engineering services would be procured under either an amendment to the consultant's contract or under a separate contract with the city.

1.7 Attend a Project Design Report submittal review meeting with City staff, if necessary.

1.8 Attend Public Works and Council meetings as necessary.

TASK 2 - FINAL DESIGN SERVICES:

This task consists of all services necessary to take the project from Task 1 Preliminary Design Services through the Final Design Services, and may include the following itemized services.

2.1 Address City comments from the Task 1 City review(s) and make appropriate modifications to the preliminary (30%) plans, the schematic design, and the Project Design Report.

2.2 Prepare a Design Development (65%) submittal to include those drawings, plans, elevations, outline specifications and other documents as necessary to fix and illustrate the size and character of the project as pertains to type of architectural, structural, mechanical and electrical systems, materials, and other such items as may be

appropriate.

2.3 The Design Development submittal shall include a description of any recommended special material or equipment purchases or separate bid packages, and phasing, scheduling, occupancy, and facility operation considerations for project construction. *Note: None are anticipated.*

2.4 Arrange a conference with the Project Team to review and present the Design Development submittal. Provide three (3) copies of the submittal to the City Project Manager at least seven (7) days prior to the meeting. Take notes of the meeting and provide minutes to all participants.

2.5 Make necessary revisions to the documents based as a result of the review conference(s). Notify the City Project Manager of any recommended adjustments to the project schedule or budget appropriate as a result of the reviews.

2.6 Prepare contract documents consisting of drawings, plans, and specifications which set forth in detail the requirements for construction of the project consistent with the work of the previous tasks.

2.7 Provide complete plans and specifications for construction contract(s) consistent with the procurement procedures established in Task 2, items 2.3 and 2.4 (above). Plan sheets shall be prepared utilizing the City of Rapid City Drafting Standards then current, and shall adhere to current City of Rapid City guidelines.

2.8 Provide detailed specifications supplementing the City of Rapid City Standard Specifications, as necessary. Typically project drawing specific issues should be addressed as a General Note on the drawings, and material types and material specific items would be included as a detailed specification.

2.9 If desiring exceptions from City requirements or specifications, it is the Consultant's responsibility to request and secure exceptions. Failure by the City to comment on a nonconforming item during a review does not constitute the granting of an exception.

2.10 Staking information shall include either of the following formats:

On the Plans

- Station offsets for all items of work requiring field staking.

In tabular form on a plan sheet (schedule)

- Coordinates and description of inter-visible control points.
- Coordinates of all items of work requiring field staking.
- Benchmark information shall be provided on each sheet.

2.11 Incorporate Erosion and Sediment Control measures and provide Erosion and Sediment Control Plans as needed to comply with regulatory provisions.

2.12 Complete the "Flood Management Project Water Quality Impact Assessment Checklist Form", and incorporate applicable measures within the construction documents as necessary.

2.13 If federally funded, incorporate NEPA requirements, wetland mitigation, monetary, ROW certification, environmental certification, SHPO, Architectural, Catx noise analysis, FONSI, etc. *Not anticipated nor included in estimated fee.*

2.14 Provide three (3) copies of the finalized Project Design Report.

2.15 Provide three (3) copies of the Final Design Services submittal. The submittal shall consist of complete plans, specifications, contract documents, and opinion of probable construction cost to the City of Rapid City's project manager for review. The Final Design Services submittal will be made to the City when the consultant believes the plans, specifications, contract documents, and opinion of probable construction cost are 100% complete.

2.16 Provide and make submittals for review by the Rapid City Planning Commission per SDCL §11-6-19 submittal if required. Provide supplemental information and attend Planning Commission meetings as necessary to present the project or to respond to any questions or concerns. *No planning meeting attendance anticipated nor included in estimated fee.*

2.17 Address 100% submittal staff comments as necessary.

2.18 Prepare any and all permits with exhibits required for the City.

2.19 Prepare and submit a final "Engineer's Estimate" of probable construction cost for the project. The estimate shall be signed and dated by the Engineer.

2.20 Deliver the following:

- Provide printed copies of bid documents (estimated forty (40) sets) including complete plans, specifications, and contract documents, to the City of Rapid City's project manager for City distribution.
- Provide complete plans on CD compatible with AutoCAD Release 2006 to 2008 format.
- Provide all topographic, control, and design points in the .dwg file and in tabular format, both on CD and on hard copy printout.
- Provide complete specifications and contract documents on CD in Microsoft Word XP or previous versions.

- A unit price cost estimate shall be provided on CD in Microsoft Excel XP or previous version on the City of Rapid City "Engineer's Estimate" form.
- The Engineer's Estimate of probable construction costs is a component of this submittal.

2.21 All submittals (drawings and specifications) believed by the Engineer of Record to be a final, shall contain a Certification Statement of Conformance with City Standards which shall read, "I (insert Engineer of Record's name) Certify that I have read and understand the provisions contained in the City of Rapid City Standard Specifications for Public Works Construction, current edition and the City of Rapid City's adopted Design Criteria Manuals. The drawings and specifications contained here within, to the best of my knowledge, were prepared in accordance with these documents or a properly executed exception to the Standard Specifications and/or Infrastructure Design Criteria Manual has been secured." This statement shall appear on the title sheet of the drawings and on the first page of specifications after the cover sheet. The "Certification Statement of Conformance with City Specifications" shall be signed and dated by the Engineer of Record.

2.22 The Consultant shall submit plans and specifications to the Department of Environment and Natural Resources for approval, and shall address any comments or corrections required.

TASK 3 – BIDDING SERVICES:

This task consists of all services necessary for the administration of the Bidding Services of the project, and may include the following itemized services.

- 3.1 Submit sufficient information to the City of Rapid City project manager for completion of City Advertising Authority form.
- 3.2 Print plans and specifications for City distribution to bidders and the City of Rapid City, refer to "Deliverable" above in Task 2.
- 3.3 Print and distribute five (5) copies plans/ drawings to the City of Rapid City at 11" x 17" scale for use by city staff and construction services personnel.
- 3.4 Arrange and conduct a Pre-bid Conference. Maintain minutes and a record of attendance. Distribute copies to all attendees. An example Pre-Bid Conference agenda is enclosed as Attachment Five for reference.
- 3.5 Issue addenda to the bid documents as required.
- 3.6 Attend the bid opening (to be held at the City Finance Office).
- 3.7 Attend Public Works Committee and Council Meetings as required.
- 3.8 Prepare the Bid Tabulation in City of Rapid City Microsoft Excel project book format. Submit an electronic Bid Tabulation and a printed hard copy to Engineering Services within one (1) working day of the bid opening. Forward a copy of the final bid tabulation to all bidders and project manager.
- 3.9 Provide an award recommendation to City of Rapid City project manager.
- 3.10 Prepare Notice of Award letter for City of Rapid City project manager signature and distribution to contractor for execution.
- 3.11 Prepare contracts and submit to contractor for execution.
- 3.12 Review construction contract documents and other submittals from the contractor and submit to City of Rapid City project manager for distribution to City Attorney's for approval and signatures of the Mayor and Finance Officer.

TASK 4 – BASIC CONSTRUCTION SERVICES (NOT INCLUDED AT THIS TIME):

This task consists of all services necessary for the administration of the Basic Construction Services of the project construction stage, and may include the following itemized services.

- 4.1 Prepare Notice to Proceed for City of Rapid City project manager signature and distribution to contractor for execution.
- 4.2 Arrange and conduct a Pre-Construction Conference including agenda. Record minutes and distribute to all attendees. (An example meeting agenda and topics is shown in Attachment Six.)
- 4.3 Provide written clarification regarding drawing and specification questions.
- 4.4 Provide recommendations to address changed or unknown conditions that may appear during construction.
- 4.5 Review and take action on shop drawings, product submittals, test results, and other submittals.
- 4.6 Prepare "As-Built" plans and specifications. "As-Built" plans and specifications shall be submitted as a hard copy and on CD compatible with AutoCAD Release 2006 format. Submit to Engineering Services within 30 days of project completion. In the event that the City did not issue a "Notice to Proceed" for Task 5 services, then the City shall forward construction record documents for preparing the "As-Built" plans and specifications.

TASK 5 – EXPANDED CONSTRUCTION SERVICES (NOT INCLUDED AT THIS TIME):

This task consists of all services necessary for the administration of the Expanded Construction Services of the project construction stage, and may include the following itemized services.

- 5.1 Mark removal limits of appropriate items.
- 5.2 Prepare a Public Service Announcement (P.S.A.) for work requiring street closures or other activities that merit public notification as determined by Engineering Services. Engineering Services will be responsible for distribution to all local media. Each P.S.A. should be prepared at least one week prior to start of work or change in operations that may significantly affect the public.
- 5.3 Appropriately notify affected Property Owners.
- 5.4 Arrange and conduct appropriate progress meetings. Record minutes and distribute to all attendees.
- 5.5 Provide daily on-site observation to assure that the methods and materials used by the contractor meet the intent of the plans and specifications. For buried installations such as for sewer and water mains inspection or observations shall be performed for all components prior to being covered; this may require full time on-site personnel.
- 5.6 Prepare daily reports. A daily record of activity will be maintained by the inspector including weather conditions, construction progress, deviations from the plans and specifications, work performed, quantities installed and any other pertinent information. Such information shall be neatly and concisely entered into the City of Rapid City Project Inspector's Diary and Inspection quantity book. Submit detachable copies to Engineering Services on a weekly basis. (Coordinate with the City's construction phase project manager as to the acceptability of electronic formats for these reports).
- 5.7 Perform stormwater inspections, prepare reports, and keep the erosion and sediment control plans current as required by the ordinance regulating construction site runoff control, Chapter 8.46, and the Stormwater Quality Manual.
- 5.8 Provide soil compaction testing according to the Standard Specifications. All test results shall be submitted to the City of Rapid City within 30 days of project completion.
- 5.9 Provide assurance testing (or witness Contractor testing) according to the Standard Specifications. All test results shall be submitted to the City of Rapid City within 30 days of project completion.
- 5.10 Prepare and submit monthly pay requests.
- 5.11 Prepare change orders, and extra work orders for contractor on City of Rapid City forms and make recommendations for their approval or denial.
- 5.12 Prepare and submit project completion punch list items to the Contractor and Engineering Services and oversee its completion.
- 5.13 Prepare and submit City of Rapid City project "Construction Project Close-out Checklist" indicating compliance with Standard Specifications and acceptance of the various infrastructure components. The Consultant will be responsible for coordinating completion of the checklist items with the Contractor. The checklist is enclosed as Attachment Four for your information.
- 5.14 Prepare letter of certification of project completion verifying compliance with plans and specifications and start of warranty period.
- 5.15 Prepare a letter to SDDENR notifying them of project completion.

PROJECT TEAM, MEETINGS, AND SUBMITTALS SUMMARY

Project team members will include:

- The Consultant
- Water Reclamation Division Staff
- City Engineering Services Division staff

Meetings requiring the Consultant's participation will likely include, but may not be limited to the following:

- Kick-off meeting, Task 1
- Project Design Report with preliminary (30%) plans and schematic design submittal review meeting, Task 1
- Design Development (65% design) review meeting, Task 2
- 100% Plans, Specifications, and Contract Documents review, Task 2 (This submittal is made when the consultant believes the plans, specifications, contract documents, and opinion of probable construction cost documents are complete).
- Prebid Conference, Task 3
- Bid Opening, Task 3

- Pre-construction Conference, Task 4
- Construction Progress Meetings, Task 5
- Committee and Council Meetings as required, All Tasks

Submittals include:

- Kick-off meeting, Task 1 meeting minutes
- Project Design Report with preliminary (30%) plans and schematic design submittal review, Task 1 including meeting minutes
- Design Development (65%) submittal, Task 2 including meeting minutes
- Final (100% complete) plans, specifications, contract documents, and opinion of probable construction cost Contract Documents Review, Task 2 including meeting minutes
- Final submittal of documents for bidding, including complete plans, specifications, contract documents, and Engineer's estimate of probable construction cost; Task 2
- Pre-bid conference meeting minutes, Task 3
- Bid Tabulation and award recommendation, Task 3
- Pre-Construction conference meeting minutes, Task 4
- Shop Drawing submittal reviews, Task 4
- "As-Built" plans and specifications, Task 4
- Progress meeting minutes, Task 5
- Daily observation reports, Task 5
- Project completion "Punch List", Task 5
- "Construction Project Close-out Checklist", Task 5
- Letter of certification of project completion, Task 5

Schedule

HDR has reviewed the project schedule as set forth by the City of Rapid City in the RFP and assembled a fully capable project team prepared to meet the City's schedule. The project schedule as presented in the RFP is fully acceptable to HDR and will be as listed below.

MILESTONE	DATE
Contract Negotiations Complete	June 15, 2009
Notice to Proceed with Design	June 16, 2009
Preliminary Design Services Submittal Including Schematic Design (30%) and Design Report	July 27, 2009
Design Development (65%) Review Conference	August 27, 2009
Complete Bid Documents Submittal Including 100% Plans, Specifications, and Contract Documents	October 2, 2009
Final Plans, Specifications, and Contract Documents Complete for Issuance to Bidders (Bid Advertisement)	October 17, 2009
Project Bid Opening Date	November 10, 2009
Project 100% Construction Complete	TBD -- Winter 2010

PART 2 -- ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for

the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.

3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.

4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A1.01.A.4.

5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

6. Providing renderings or models for Owner's use.

7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

8. Furnishing services of Engineer's Consultants for other than Basic Services.

9. Services attributable to more prime construction contracts than specified in paragraph A1.03.C.

10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.

11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.

13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.

14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.

15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A1.05.A.5, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

16. Providing Construction Phase services beyond the original date for final completion of the Work.

17. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.

18. Preparing and furnishing to Owner Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

19. Preparation of operation and maintenance manuals.
20. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
21. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
22. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT B**, consisting of two pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
2. Legal services with regard to issues pertaining to the Project as Owner requires or deems appropriate, Contractor raises, or Engineer reasonably requests, including but not limited to the review of Contract Documents supplied by Engineer.
3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
4. Placement and payment for advertisement for Bids in appropriate publications.

J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

L. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

M. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.

P. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.

Q. Perform or provide the following additional services: as described in Exhibit A, Scope of Services.

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT C**, consisting of two pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 -- Owner's Responsibilities

C2.01 Compensation For Basic Services (other than Resident Project Representative and Post-Construction) – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative and Post-Construction Phase services, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.
2. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under paragraph C2.01 is estimated to be \$89,802.00. This is a not-to-exceed estimate and Engineer will not exceed this amount without prior approval from Owner.
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.
5. The total estimated compensation for Engineer's services incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultant's charges.
6. The amounts billed for Engineer's services under paragraph C2.01 will be based on the cumulative hours charged to the Project 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 Consultant's charges.
7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.

C2.02 Compensation for Reimbursable Expenses

A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.

B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.

C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.10.

C2.03 Other Provisions Concerning Payment

A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.

B. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

This is **Appendix 1 to EXHIBIT C**, consisting of one pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

8.5"x11" B&W Copies	\$0.06/copy
8.5"x11" Color Copies	\$0.34/copy
11"x17" B&W Copies	\$0.12/copy
11"x17" Color Copies	\$0.75/copy
Other Reproducible Copies	at cost
Mileage (auto)	\$0.55/mile
Mileage (Field Truck)	\$0.55/mile
Long Distance Phone Calls	at cost
Mobile Phone	at cost
Meals and Lodging	at cost
Mail/Express Delivery	at cost
Technology Charge	\$3.70/direct labor hour
Other Direct HDR Expenses	at cost

This is **Appendix 2 to EXHIBIT C**, consisting of one page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

Standard Hourly Rates Schedule

Disipline	Hourly Rate
Project Principal	\$171.37
Project Manager	\$137.58
Project Engineer - Process	\$ 80.45
Project Engineer - Civil	\$ 74.40
Senior Civil Engineer	\$111.60
Senior Process Engineer	\$208.75
QA/QC Engineer	\$155.00
Electrical Engineer	\$169.23
Instrumentation & Controls Engineer	\$168.80
2-Person Survey Crew	\$155.00
CAD Technician	\$ 78.24
Administration	\$ 62.00

Note: Hourly rates are based upon staff proposed for the Project and current wage rates. HDR will adjust hourly rates if there are changes in assigned personnel and/or individual wage rates.

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT D**, consisting of one page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

RESERVED

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT E**, consisting of one page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

RESERVED

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT F**, consisting of one page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

RESERVED

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT G**, consisting of one page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.04 Insurance

A. The limits of liability for the insurance required by paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- A. Commercial General Liability Insurance: CONSULTANT shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.
- B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance: CONSULTANT agrees to procure and maintain professional liability insurance or miscellaneous professional liability Insurance with a limit not less than \$1,000,000.00.

The insurance provided for general liability and errors and omissions shall be adequate for the liability presented, and shall be written by an admitted carrier in the State of South Dakota.

- C. Business Automobile Liability Insurance: CONSULTANT shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$500,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.
- D. Worker's Compensation Insurance: CONSULTANT shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT H**, consisting of one pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

RESERVED

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT I**, consisting of one pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

RESERVED

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT J**, consisting of one pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

Special Provisions

Paragraph 6.01.H of the Agreement is amended to include the following agreement(s) of the parties:

For any construction contract documents prepared hereunder will utilize the City of Rapid City's Standard Specifications for Public Works Construction, 2007 version.

SUGGESTED FORMAT
(for use with E-500, 2002 Edition)

This is **EXHIBIT K**, consisting of one pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2009.

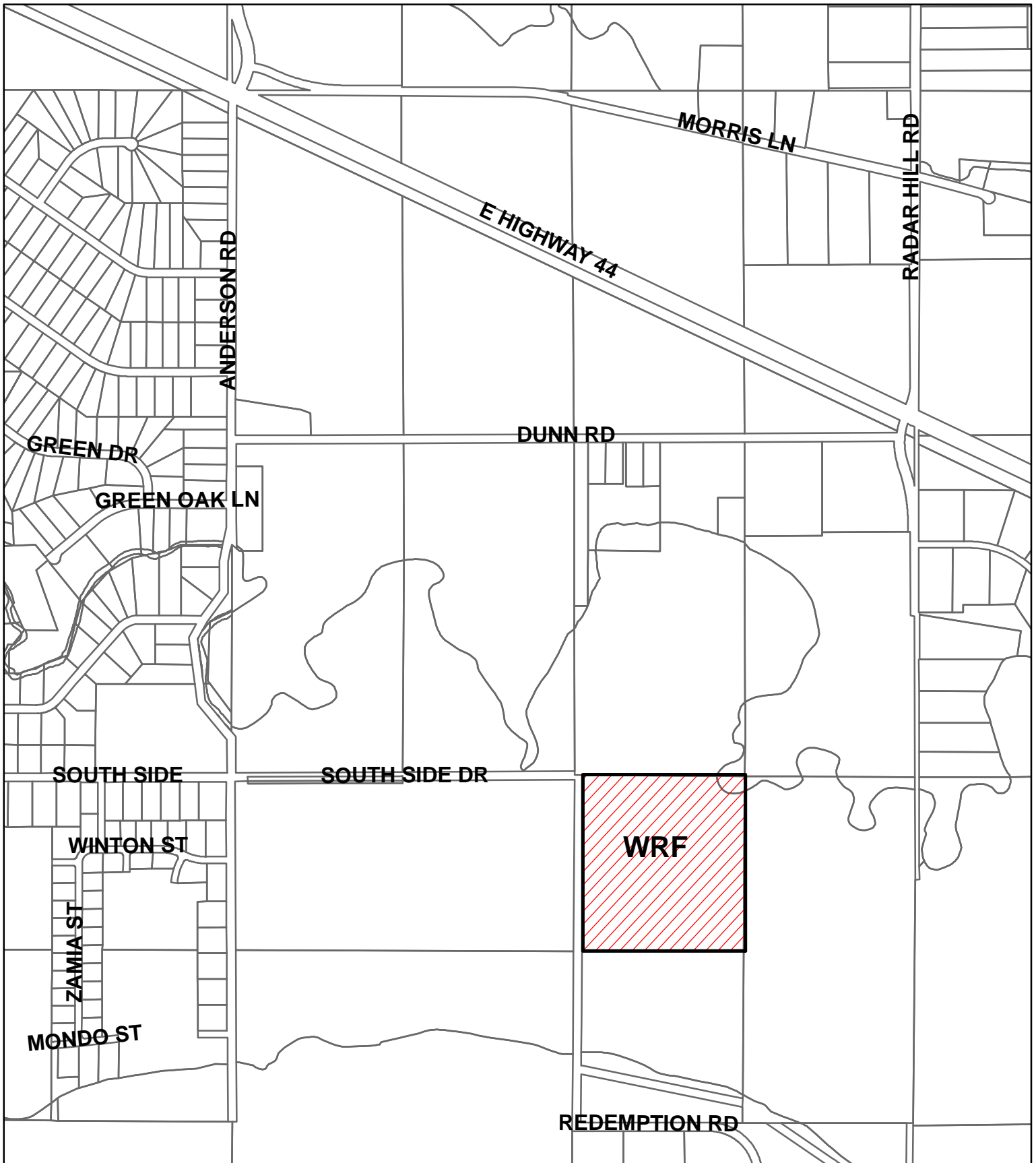
AMENDMENT TO OWNER-ENGINEER AGREEMENT

RESERVED

EXHIBIT "A"

PW060909-12

SCALE 1" = 1000'



WATER RECLAMATION FACILITY
NON-POTABLE WATER SYSTEM REPLACEMENT
PROJECT NO. WRF08-1770 **CIP NO. 50748**