

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

PW022409-26

Date: 1/1/09

Project Name & Number: Tower Road Watermain Loop Project W09-1786

CIP #: 50753

Project Description: Construct a new watermain beginning at Tower Road and Sandstone and extending approximately 1300 feet south

Consultant: FMG, Inc.

Original Contract Amount: \$2800.00

Original Contract Date: 2/17/09

Original Completion Date: 3/27/09

Addendum No:

Amendment Description:

Current Contract Amount: _____
Change Requested: _____
New Contract Amount: _____ \$0.00

Current Completion Date: _____
New Completion Date: _____

Funding Source This Request:

Amount	Dept.	Line Item	Fund	Comments
\$2,800.00	933	4380	602	
\$2,800.00	Total			

Agreement Review & Approvals

Rachel Johnson _____ 2/17/09 _____
Project Manager Date
[Signature] _____ 2-17-09 _____
Department Director Date

[Signature] _____ 2-18-09 _____
Division Manager Date

City Attorney Date

ROUTING INSTRUCTIONS

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

FINANCE OFFICE USE ONLY

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

Date	Initials	Approved	
Appropriation			Y N
Cash Flow			Y N



FMG. INC. 3700 Sturgis Road, Rapid City, South Dakota 57702-0317 605/342-4105
FAX 605/342-4222

PW022409-26

February 16, 2009

City of Rapid City
Engineering Services
Mr. Keith Johnson
300 6th Street
Rapid City, SD 57701-5035

Re: Geotechnical Evaluation – Tower Road Water Main Loop
Project W09-1786

Dear Mr. Johnson:

Thank you for considering FMG Inc., for the referenced project. Per your request, we have prepared this proposal for the geotechnical evaluation of the proposed project. We understand that a geotechnical evaluation is desired to determine subsurface conditions and to develop pavement section alternatives.

TASK 1 – Geotechnical Exploration

Per your suggestion, three borings to depths of approximately 10 feet are planned to evaluate the existing soil conditions and determine geotechnical design parameters. The borings will be drilled along Tower Road south of Sandstone Lane. Field testing will be performed, and samples will be extracted for further laboratory analysis.

Assumptions:

- Borehole depths of approximately 10 feet.
- Two field soil resistivity tests, one near BH-1, one near BH-3
- Right of entry and site access is provided for conventional two-wheeled drive vehicles.

TASK 2 – Laboratory Testing

Select soil samples will be tested in our laboratory to determine their general classification, physical properties, and engineering characteristics.

Assumptions:

- Natural Moisture Content.
- Standard Sieve Analysis.
- Atterberg Limits.
- Modified Proctor Testing.
- California Bearing Ratio (CBR) Testing.
- Specific laboratory testing program will be tailored to soil types encountered.

TASK 3 – Report Preparation

Upon completion of the field and laboratory testing and our analysis, a report will be prepared that transmits the geologic logs and testing results, and provides our recommendations. In general our recommendations will include the pavement section design, subgrade preparation and fill placement recommendations, and general construction recommendations that we consider applicable.

Assumptions:

- Asphalt pavement is desired.
- Typical water main depth placement (approx. 6-10 feet).

Schedule & Fees

We are available to begin the field services for the work outlined in this proposal within 1 week from notice to proceed, with approximately 2 to 3 weeks from time of drilling for completion. We have assumed that right of entry and site access is provided for conventional two-wheel drive vehicles. We propose to complete this work for a total fee of \$2,800.00. We will not exceed the cost estimate without justification and prior approval. If you have any questions, or desire any additional information, please call us at your earliest convenience. If this proposal meets your approval, please sign and return a copy of the attached Professional Services Agreement. *We appreciate the opportunity to be of continued service.*

Sincerely,

FMG Inc.,



Alex Fisher, P.E.

c: FMG February 2009 proposal file

**PROFESSIONAL SERVICES AGREEMENT
for GEOTECHNICAL SERVICES**

This AGREEMENT is made this 16th day of February, 2009 by and between **City of Rapid City**, hereinafter called the Client, and **FMG, Inc.**, 3700 Sturgis Road, Rapid City, South Dakota, hereinafter called the Consultant.

The Client agrees to employ the Consultant to render professional services as described in this contract relating to property at the following site hereinafter referred to as ("the site"):

**Tower Road Water Main Loop
Project W09-1786**


It is agreed that the Consultant shall perform the services and the Client shall make payment for same in accordance with the terms and conditions set forth in the attached Articles and Exhibits which are herewith made a part of this Agreement. The Agreement between the parties consist of these terms, Exhibits, attached proposals, and other attachments noted. Together, these elements constitute the entire Agreement superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this Agreement must be mutually agreed to in writing.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement (in duplicate) on the day and year first mentioned above.

CLIENT:
City of Rapid City

CONSULTANT:
FMG, INC

By: _____

By:  _____

Title: _____

Title: Project Manager _____

Date: _____

Date: February 16, 2009 _____

ARTICLE I: PROJECT PROVISIONS

A. PROJECT DESCRIPTION

Please refer to the proposal dated February 16, 2009 attached herewith, which is made part of this Agreement.

B. SCOPE OF SERVICES AND ESTIMATE OF COSTS

Please refer to the proposal dated February 16, 2009 attached herewith, which is made part of this Agreement.

C. COST VARIABILITY

The services will be billed on a unit-cost basis. The unit costs are considered fixed; however, the total will vary depending on the actual work performed. The total cost estimate is prepared based upon the Consultant's understanding of the project requirements and anticipated general conditions. However, the total cost is highly dependent upon the nature of the site characteristics and subsurface conditions which will determine the amount and type of testing and analysis. It is, therefore, unlikely that the actual testing and project time estimates will precisely match the indicated Project Estimate.

The Consultant will advise of substantial cost variances from the original total estimate prior to completion of the report.

D. INFORMATION AND SERVICES

1. The Client shall provide any existing site information as outlined in the following ARTICLE II: GENERAL CONDITIONS, and any additional data relating to the site surface and subsurface characteristics known to be in existence. Any future plans for buildings or development should be provided and clearly shown on the property. Proposed building plans should include elevations of major structural features (floors, footings, etc.,) relative to the existing site grade.
2. The scope of work outlined in the proposal or other attachments represents a minimum program at this time. As the results of a records search, initial testing (if performed) or site walkover become known, other tests and/or sampling may be recommended to the Client for written approval as Additional Services. In general, an increased frequency of sampling and testing will improve the opinions reached in the Consultant's report.
3. Because geologic and soil formations are inherently random, variable, and indeterminate in nature, the professional services rendered by the Consultant, and opinions provided with respect to such services under this Agreement (including

opinions regarding potential cleanup costs), are not guaranteed to be a representation of actual site conditions or contamination or costs, which are also subject to change with time as a result of natural or man-made processes.

4. Consultant will provide Client with a written report ("Report") in connection with the services performed. The Report will present such findings and conclusions as the Consultant may reasonably make with the information gathered in accordance with this Agreement.
5. In preparing the Report, Consultant may review and interpret certain information provided to it by third parties, including government authorities, registries of deeds, testing laboratories and other entities. Consultant will not conduct an independent evaluation of the accuracy or completeness of such information and shall not be responsible for any errors or omissions contained in such information. The Client agrees to defend, indemnify and save harmless the Consultant, his officers, agents and employees from and against any and all claims, costs, suits and damages, including attorneys' fees arising out of errors, omissions and inaccuracies in documents and information provided to the Consultant.
6. The Report and other instruments of service are prepared for, and made available for the sole use of, the Client, and the contents thereof may not be used or relied upon by any other person without the express written consent and authorization of the Consultant.

ARTICLE II: GENERAL CONDITIONS

SECTION 1.0 STANDARD OF CARE

- 1.1 Consultant agrees to strive to perform the services set forth in this Agreement in accordance with generally accepted professional practices, in the same or similar localities, related to the nature of the work accomplished, at the time the services are performed. Consultant's services shall not be subject to any express or implied warranties whatsoever.
- 1.2 Client recognizes that site characteristics and subsurface conditions may vary from those observed at locations where observations, borings, surveys, or explorations are made, and that site conditions may change with time. Client further recognizes that even with a comprehensive sampling and testing program, implemented with experienced personnel who function in accordance with a professional standard of care, there may be failure to detect certain conditions. Client will furnish to Consultant all reports, data, studies, plans, specifications, documents and other information deemed necessary by Consultant for performance of the services. Consultant may rely upon Client provided documents in performing the services but Consultant assumes no responsibility or liability for the accuracy of such documents. Data, interpretations, and recommendations by Consultant will be based solely on information available to Consultant, and Consultant will not be responsible for hidden conditions or other parties' interpretations or use of the information developed.

SECTION 2.0 SITE ACCESS AND RIGHT OF ENTRY

- 2.1 Client will grant or obtain free access to the site for all equipment and personnel necessary for Consultant to perform the work set forth in this Agreement. Client will notify any and all possessors of the project site that Client has granted Consultant free access to the site. Consultant will take reasonable precautions to minimize damage to the site, but it is understood by Client that, in the normal course of work, some damage may occur but in the absence of any written damage agreement, Consultant shall not be liable or responsible for such damage.
- 2.2 Consultant assumes site is accessible with conventional two-wheel driven vehicles and truck mounted drilling rigs. Any additional costs to gain access including but not limited to road construction, towing, or similar activities will be considered an expense of the Client beyond the proposal amount.

SECTION 3.0 SITE CONDITIONS

- 3.1 Client is responsible for accurately delineating the locations of all subterranean structures and utilities. Consultant will take reasonable precautions to avoid known subterranean structures, and Client waives any claim against Consultant, and agrees to defend, indemnify, and hold Consultant harmless from any claim or liability for injury or loss, including costs of legal defense, arising from damage done to subterranean structures and utilities by Consultant not identified or accurately located by client. In addition, Client agrees to compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such claim, with compensation to be based upon Consultant's prevailing fee schedule and expense reimbursement policy.

SECTION 4.0 DISPOSITION OF SAMPLES AND EQUIPMENT

- 4.1 Disposition of non-contaminated Samples. No samples of non-contaminated soil and rock will be kept by Consultant longer than thirty (30) days after submission of the final report unless agreed otherwise. Further storage or transfer of the samples can be made at the Client's expense and written request.
- 4.2 Should any of these samples be contaminated by hazardous substances, it is Client's responsibility to select and arrange for lawful disposal procedures, that is, procedures which encompass removing the contaminated samples from Consultant's custody and transporting them to a disposal site. Client is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures.
- 4.3 Due to risks to which Consultant is exposed, Client agrees to waive any claim against Consultant, and to defend, indemnify and hold Consultant harmless from any claim or liability for injury or loss, including costs of legal defense, arising from Consultant's containing, labeling, transporting, testing, storing, or other handling of contaminated samples. Client also agrees to compensate Consultant for any time spent and expenses incurred by Consultant in defense of any such claim, with such compensation to be based upon Consultant's prevailing fee schedule and expense reimbursement policy.
- 4.4 Unless Client indicates otherwise within thirty (30) day period referenced above, Client hereby instructs Consultant to make arrangements, as Client's agent, for proper transportation and disposal of samples. Client hereby agrees to pay all associated sample disposal costs borne by the Consultant. Client recognizes and agrees that Consultant is acting as a bailee and at no time assumes title to said waste.
- 4.5 Contaminated Equipment. All laboratory and field equipment contaminated in performing our services will be cleaned at Client's expense. Contaminated consumables will be disposed of and replaced at Client's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of Client. All such equipment shall be delivered to Client or disposed of in a manner similar to that indicated for hazardous samples. Client agrees to pay the fair market value of any such equipment which cannot reasonably be decontaminated.

SECTION 5.0 AQUIFER CONTAMINATION

- 5.1 Subsurface sampling may result in unavoidable contamination of certain subsurface areas, as when a probe or boring devices moves through a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated and capable of spreading hazardous materials on or off-site. Because nothing can be done to eliminate the risk of such an occurrence, and because subsurface sampling is a necessary aspect of the work which Consultant will perform on Client's behalf, Client waives any claim against Consultant and agrees to defend, indemnify and hold Consultant harmless from any claim or liability for injury or loss, including costs of legal defense, which may arise as a result of alleged or actual contamination caused by such drilling or sampling. Client further agrees to compensate Consultant for any time spent or expense incurred by Consultant in defense of any such claim, in accordance with Consultant's prevailing fee schedule and expense reimbursement policy.

SECTION 6.0 MONITORING

- 6.1 If Consultant is retained by Client to provide a site representative for the purpose of monitoring specific portions of construction work or other field activities as set forth in the proposal, then this section applies. For the specified assignment, Consultant will report observations and professional opinions to Client. The Consultant has no right to reject or stop work of any agent of the Client. Such rights are reserved solely for Client. Furthermore, Consultant does not in any way guarantee the completion or quality of the performance of the work of any party retained by Client to provide field or construction-related services.
- 6.2 Consultant will not be responsible for and will not have control or charge of specific means, methods, techniques, sequences or procedures of construction or other field activities selected by any agent or agreement of Client or safety precautions and programs incident thereto.

SECTION 7.0 DISCOVERY OF UNANTICIPATED POLLUTANT RISKS

- 7.1 If, while performing the services, pollutants are discovered that pose unanticipated risks, it is hereby agreed that the scope of service, schedule, and the estimated project cost will be reconsidered and that this contract shall immediately become subject to renegotiation or termination.
- 7.2 In the event that the Agreement is terminated because of the discovery of pollutants posing unanticipated risks, it is agreed that Consultant shall be paid for our total charges for labor performed and reimbursable charges incurred to the date of termination of this Agreement, including, if necessary, and additional labor or reimbursable charges incurred in demobilizing.
- 7.3 Client also agrees that the discovery of unanticipated hazardous substances may make it necessary for Consultant to take immediate measures to protect health and safety. Consultant agrees to notify Client as soon as practically possible should unanticipated hazardous substances or suspected hazardous substances be encountered. Client authorizes Consultant to take measures that in Consultant's sole judgment are justified to preserve and protect the health and safety of Consultant's personnel and the public. Client agrees to compensate Consultant for the additional cost of working to protect employees' and the public's health and safety.

SECTION 8.0 RESPONSIBILITIES OF THE CLIENT

- 8.1 The Client shall provide all information in its possessions, custody, or control which relates to the site, its present and prior uses, or to activities at the site which may bear upon the services of the Consultant under this Agreement, including, but not limited to, the following:
- ◆ a legal description of the site, including boundary lines and a site plan;
 - ◆ historical information as to the prior owners and previous structures at the site;
 - ◆ identification of the location of utilities, underground tanks, and other structures and the routing thereof at the site, including available plans of the site;
 - ◆ a description of activities which were conducted at the site at any time by the Client or by any person or entity which would relate to the services provided by the Consultant; and
 - ◆ identification, by name, quantity, location, and date, of any release or handling of hazardous or potentially hazardous substances.
- 8.2 To the extent required by law, Client shall promptly report regulated conditions, including, without limitations, the discovery of releases of hazardous substances, at the site to the appropriate public authorities in accordance with applicable law.
- 8.3 The services, information, and other data required by this Article to be furnished by the Client shall be at the Client's expense, and the Consultant may rely upon all data furnished by the Client, and the accuracy and completeness thereof.
- 8.4 Client shall be responsible for obtaining all local, state, or federal permits for Consultant's performance of this Agreement on the site. Client further agrees to notify and report to all appropriate federal, state or local authorities all information as required by law regarding Consultant's performance of this Agreement and work on site.

SECTION 9.0 ADDITIONAL SERVICES OF THE CONSULTANT

- 9.1 It is recognized by the parties of this Agreement that unforeseen circumstances may arise during the development and completion of the project which will dictate changes in the scope of work, the procedures, and the Consultant's fees.
- 9.2 Consultant shall identify the changed conditions which in Consultant's judgment make such modification necessary, and Consultant and Client shall promptly and in good faith enter into modification of the workscope and fees of this agreement to help permit Consultant to continue to meet Client's needs. If mutually agreed in writing by the Client and the Consultant, the Consultant shall perform or obtain the services of others to perform any additional activities deemed necessary for completion of the site evaluation. Additional Services are not included as part of the original proposal and will be paid by the Client as provided in writing through subsequent work proposals, at the established rates and fees.
- 9.3 It is recognized that unforeseen events or circumstances may arise causing delays beyond the control of either the Client or the Consultant. Whenever such delays occur or are about to occur, the Consultant shall immediately notify the Client. If such delays are not the fault of the Consultant and will increase his cost of performing the services required under this Agreement, the parties hereto shall enter into a written agreement describing the additional cost and the compensation therefor.

SECTION 10.0 SERVICES EXCLUDED BY THE CONSULTANT

- 10.1 Services not expressly set forth in writing in the original proposal(s) or Additional Services and/or listed in the Exhibits or attachments to this Agreement are excluded from the scope of the Consultant's services, and the Consultant assumes no duty to the Client to perform such services.
- 10.2 The services to be performed by the Consultant shall not include an analysis or determination by the Consultant as to whether the Client is in compliance with federal, state, or local laws, statutes, ordinances, regulations, or safety laws and regulations.
- 10.3 The Consultant's services shall not include directly or indirectly storing, arranging for or actually transporting, disposing, treating or monitoring hazardous material, hazardous wastes or hazardous oils.
- 10.4 The Consultant's services shall not include an independent analysis of work conducted and information provided by independent laboratories or other independent contractors retained by the Consultant in connection with the Consultant's services provided to the Client.
- 10.5 Unless specifically indicated, the Consultant's services exclude testing for the presence of asbestos, lead, polychlorinated biphenyls (PCBs), radon gas, or any airborne pollutants.

SECTION 11.0 OWNERSHIP OF DOCUMENTS

- 11.1 Reports, recommendations, and other materials resulting from Consultant's efforts are intended solely for purposes of this Agreement; any reuse by Client or others for purposes outside of this Agreement or any failure to follow Consultant's recommendations, without Consultant's written permission, shall be at the user's sole risk. Client will furnish such reports, data, studies, plans, specifications, documents, and other information deemed necessary by Consultant for proper performance of its services. Consultant may rely upon Client-provided documents in performing the services required under this Agreement; however, Consultant assumes no responsibility or liability for their accuracy. Client-provided documents which are prepared, as instruments of service, shall remain Consultant's property and consultant shall retain copyrights to these materials. Consultant will retain all pertinent records relating to services performed for a period of six years following submission of a report during which period the records will be made available to Client at all reasonable times.

SECTION 12.0 INVOICES AND PAYMENT

- 12.1 The Consultant will submit invoices to the Client monthly and/or a final bill upon completion of services. The invoices will be prepared in accordance with the applicable cost items indicated in Article I proposal(s), related attachments, and for any Additional Services provided.
- 12.2 If Client objects to all or any portion of any invoice, Client will so notify Consultant in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid.
- 12.3 Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. ~~Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. Client will pay additional charge of one and one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount, excepting any portion of the invoiced amount in dispute and resolved in favor of Client. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount.~~ All time spent and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount will be paid by Client to Consultant per Consultant's current fee schedules. Client's failure to pay Consultant within sixty (60) days may constitute a breach of this Agreement. *AK 2/19/09*

- 12.4 Payment to Consultant by Client is in no instance contingent upon Client's receipt of payment from any additional party including, but not limited to, insurance companies or governmental compensation funds.

SECTION 13.0 TERMINATION

- 13.1 This Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, the Consultant shall be paid for services performed to the termination notice date plus reasonable termination expenses.
- 13.2 In the event of termination, or suspension for more than three (3) months prior to completion of all reports contemplated by this Agreement, the Consultant may complete such analyses and records as are necessary to complete his files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of the Consultant in completing such analyses, records and reports.

SECTION 14.0 INSURANCE

- 14.1 The Consultant represents and warrants that it and its agents, staff, and subconsultants employed by it is and are protected by worker's compensation insurance and that the Consultant has such coverage under public liability and property damage insurance policies which the Consultant deems to be adequate. Certificates for all such policies of insurance shall be provided to the Client upon request in writing.
- 14.2 Within the limits and conditions of such insurance, the Consultant agrees to indemnify and save the Client harmless from and against any loss, damage, or liability arising from any negligent acts by the Consultant, its agents, staff, and consultants employed by it. The Consultant shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance. The Consultant shall not be responsible for any loss, damage, or liability arising from any acts by the Client, its agents, staff, and other consultants employed by it.

SECTION 15.0 RISK ALLOCATION

- 15.1 ~~The Client agrees to limit the Consultant's liability to the Client, the Owner, and all construction contractors and subcontracts on the project arising from the Consultant's professional acts, errors, or omissions, such that the total aggregate liability of the Consultant to all these named shall not exceed \$50,000 or the Consultant's total fee for the services rendered on this project, whichever is greater.~~ *AF 2/14/09*
- 15.2 ~~The Client further agrees to require of the contractor and his subcontractors an identical limitation of the Consultant's liability for damages suffered by the contractor or the subcontractor arising from the Consultant's professional acts, errors, or omissions. Neither the contractor nor any of his subcontractors assumes any liability for damages to others which may arise on account of the Consultant's professional acts, errors, or omissions.~~ *AF 2/14/09*
- 15.3 The Owner and Client acknowledges that the Consultant is a corporation and agrees that any claim made by the Owner or Client arising out of any act or omission of any director, officer or employee of the Consultant in the execution or performance of this agreement, shall be made against the Consultant and not against such director, officer or employee.
- 15.4 ~~Limitations on liability and indemnities in this Agreement are business understandings between the parties voluntarily and knowingly entered into, and shall apply to all theories of recovery including, but not limited to, breach of contract, warranty, tort (including negligence), strict or statutory liability, or any other cause of action, except for willful misconduct or gross negligence. The parties also agree that Client will not seek damages in excess of the limitations indirectly through suits with other parties. The term Parties shall include, but not be limited to, Client and Consultant and their officers, employees, agents, affiliates, subcontractors, and local, state and federal regulatory agencies. Client understands that changes in limitations of liability are available from the Consultant at a negotiated expense per written mutual agreement between Client and Consultant for such changes.~~ *AF 2/14/09*

SECTION 16.0 DISPUTES

- 16.1 In the event that a dispute should arise relating to the performance of the services to be provided under this Agreement, and should that dispute result in litigation, it is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred in the defense of the claim, including staff time, court costs, attorneys' fees, and other claim-related expenses.

SECTION 17.0 FORCE MAJEURE

- 17.1 Neither party to this Agreement will be liable to the other party for delays in performing the services, nor for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

SECTION 18.0 SEVERABILITY AND SURVIVAL

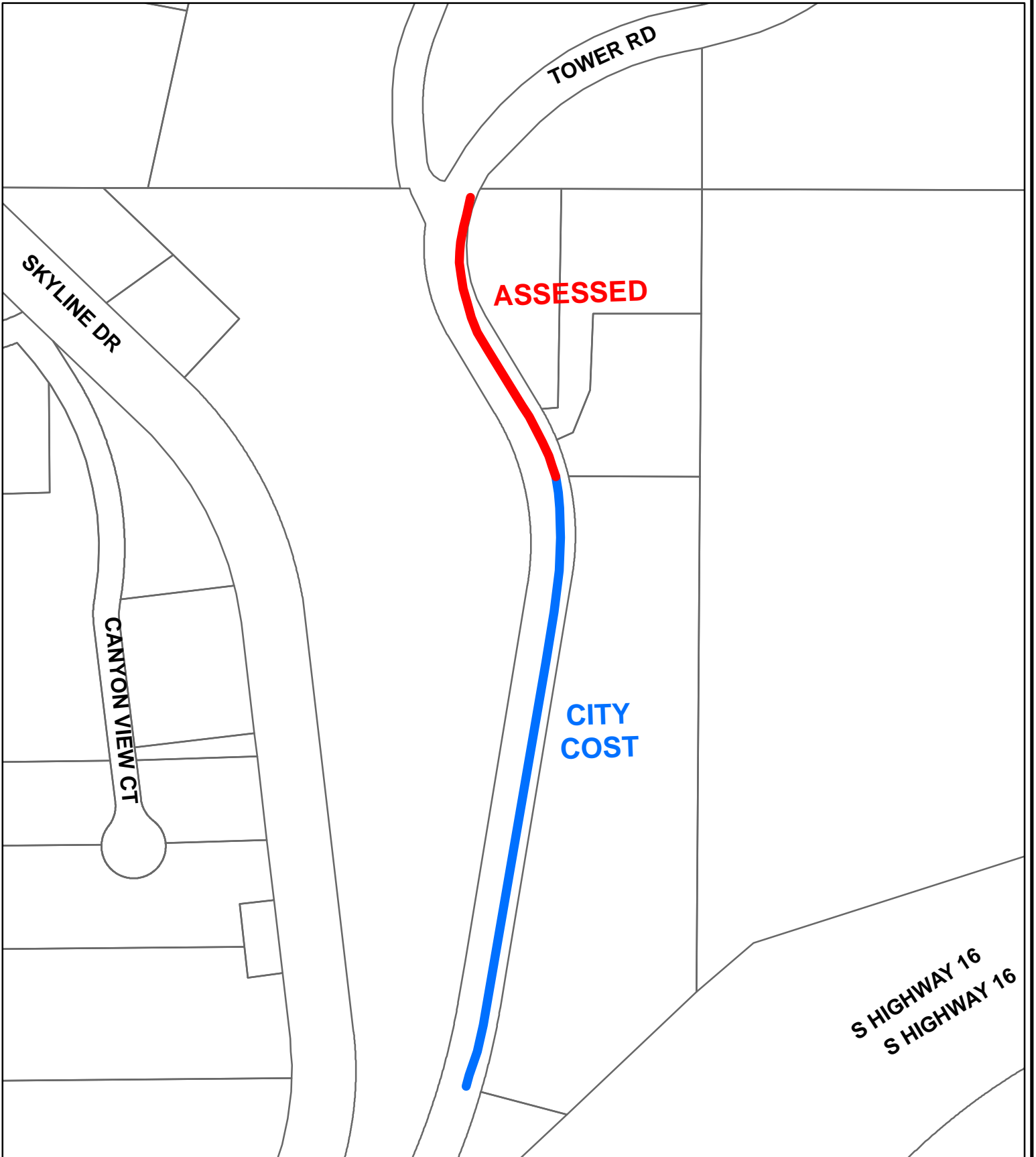
- 18.1 Any element of this Agreement later held to violate a law shall be deemed void, and all remaining provisions shall continue in force. However, Client and Consultant will in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision. All terms and conditions of this Agreement allocating liability and defining indemnities between Client and Consultant shall survive the completion of the services hereunder and the termination of this Agreement for any cause.

SECTION 19.0 GOVERNING LAW

- 19.1 The law of the State of South Dakota will govern the validity of the Agreement terms, their interpretation and performance.
- 19.2 This Agreement is binding upon the parties, their heirs, successors and assigns.
- 19.3 The parties have read the foregoing, understand completely the terms and conditions, and willingly enter into this Agreement.

EXHIBIT "A"

SCALE 1" = 200'



TOWER ROAD WATER MAIN LOOP
PROJECT NO. W09-1786 CIP NO. 50753