

**Agreement Between City of Rapid City and CETEC Engineering Services, Inc. for  
Professional Services for Investigation of Irrigation Water Source for Soccer  
Complex,  
Project No. 13-2098, CIP # 50963**

AGREEMENT made May 6, 2013, between the City of Rapid City, SD (City) and CETEC Engineering Services, Inc., (Engineer), located at 1560 Concourse Drive, Rapid City, SD 57703. City intends to obtain services for Investigation of Irrigation Water Source for Soccer Complex, Project No. 13-2098 CIP No. 50963. The scope of services is as described within this document and as further described in Exhibits A, B and C (attached).

The City and the Engineer agree as follows:

The Engineer shall provide professional engineering services for the City in all phases of the Project and as further defined in Exhibits A, B and C (attached), serve as the City's professional engineering representative for the Project, and give professional engineering consultation and advice to the City while performing its services.

**Section 1—Basic Services of Engineer**

**1.1 General**

- 1.1.1 The Engineer shall perform professional services described in this agreement, which include customary engineering services. Engineer intends to serve as the City's professional representative for those services as defined in this agreement and to provide advice and consultation to the City as a professional. Any opinions of probable project cost, approvals, and other decisions provided by Engineer for the City are rendered on the basis of experience and qualifications and represent Engineer's professional judgment.
- 1.1.2 All work shall be performed by or under the direct supervision of a professional Engineer licensed to practice in South Dakota.
- 1.1.3 All documents including Drawings and Specifications provided or furnished by Engineer pursuant to this Agreement are instruments of service in respect of the Project and Engineer shall retain an ownership therein. Reuse of any documents pertaining to this project by the City on extensions of this project or on any other project shall be at the City's risk. The City agrees to defend, indemnify, and hold harmless Engineer from all claims, damages, and expenses including attorney's fees arising out of such reuse of the documents by the City or by others acting through the City.



- 1.1.4 The contract will be based on an hourly rate and reimbursable fee schedule with a maximum not-to-exceed amount.

## 1.2 **Scope of Work**

The Engineer shall:

- 1.2.1 Consult with the City, other agencies, groups, consultants, and/or individuals to clarify and define requirements for the Project and review available data.
- 1.2.2 Perform the tasks described in the Scope of Services. (See Exhibit A.)
- 1.2.3 Conduct a location survey of the Project to the extent deemed necessary to provide adequate site information.
- 1.2.4 Prepare a report presenting the results of the study as outlined in the scope of services.

## **Section 2—Information Provided by City**

The City will provide any information in its possession for the project at no cost to the Engineer.

## **Section 3—Notice to Proceed**

The City will issue a written notification to the Engineer to proceed with the work. The Engineer shall not start work prior to receipt of the written notice. The Engineer shall not be paid for any work performed prior to receiving the Notice to Proceed.

## **Section 4—Mutual Covenants**

### **4.1 General**

- 4.1.1 The Engineer shall not sublet or assign any part of the work under this Agreement without written authority from the City.
- 4.1.2 The City and the Engineer each binds itself and partners, successors, executors, administrators, assigns, and legal representatives to the other party to this agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, regarding all covenants, agreements, and obligations of this agreement.
- 4.1.3 Nothing in this agreement shall give any rights or benefits to anyone other than the City and the Engineer.



- 4.1.4 This agreement constitutes the entire agreement between the City and the 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.
- 4.1.5 The Engineer shall make such revisions in plans which may already have been completed, approved, and accepted by the City, as are necessary to correct Engineer's errors or omissions in the plans, when requested to do so by the City, without extra compensation therefore.
- 4.1.6 If the City requests that previously satisfactorily completed and accepted plans or parts thereof be revised, the Engineer shall make the revisions requested by the City. This work shall be paid for as extra work.
- 4.1.7 If the City changes the location from the one furnished to the Engineer, or changes the basic design requiring a new survey for the portions so changed, the redesign will be paid for as extra work.
- 4.1.8 The City may at any time by written order make changes within the general scope of this Agreement in the work and services to be performed by the Engineer. Any changes which materially increase or reduce the cost of or the time required for the performance of the Agreement shall be deemed a change in the scope of work for which an adjustment shall be made in the Agreement price or of the time for performance, or both, and the Agreement shall be modified in writing accordingly. Additional work necessary due to the extension of project limits shall be paid for as extra work.
- 4.1.9 Extra work, as authorized by the City, will be paid for separately and be in addition to the consideration of this Section.
- 4.1.10 For those projects involving conceptual or process development services, activities often cannot be fully defined during the initial planning. As the project does progress, facts and conditions uncovered may reveal a change in direction that may alter the scope of services. Engineer will promptly inform the City in writing of such situations so that changes in this agreement can be renegotiated.
- 4.1.11 This Agreement may be terminated (a) by the City with or without cause upon seven days' written notice to the Engineer and (b) by the Engineer for cause upon seven days' written notice to the City. If the City terminates the agreement without cause, the Engineer will be



paid for all services rendered and all reimbursable expenses incurred prior to the date of termination.

If termination is due to the failure of the Engineer to fulfill its agreement obligations, the City may take over the work and complete it. In such case, the Engineer shall be liable to the City for any additional cost to the extent directly resulting from Engineer's action.

- 4.1.12 The City or its duly authorized representatives may examine any books, documents, papers, and records of the Engineer involving transactions related to this agreement for three years after final payment. All examinations will be performed at reasonable times, with proper notice. Engineer's documentation will be in a format consistent with general accounting procedures.
- 4.1.13 The City shall designate a representative authorized to act on the City's behalf with respect to the Project. The City or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Engineer in order to avoid unreasonable delay in the orderly and sequential progress of the Engineer's services.
- 4.1.14 Costs and schedule commitments shall be subject to renegotiation for delays caused by the City's failure to provide specified facilities or information or for delays caused by other parties, excluding sub-contractors and sub-consultants, unpredictable occurrences including without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdowns, acts of God, or the public enemy, or acts of regulations of any governmental agency or any other conditions or circumstances beyond the control of the City or Engineer. Temporary delays of services caused by any of the above which results in additional costs beyond those outlined may require renegotiation of this agreement.
- 4.1.15 The City will give prompt written notice to the Engineer if the City becomes aware of any fault or defect in the Project or nonconformance with the Project Documents.
- 4.1.16 Unless otherwise provided in this Agreement, the Engineer and the Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos products, polychlorinated biphenyl (PCB), or other toxic substances.



- 4.1.17 In the event asbestos or toxic materials are encountered at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of Engineer's services, Engineer may, at their option and without liability for consequential or any other damages, suspend performance of services on the project until the City retains appropriate specialist CONSULTANT(S) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials.
- 4.1.18 This agreement, unless explicitly indicated in writing, shall not be construed as giving Engineer the responsibility or authority to direct or supervise construction means, methods, techniques, sequences, or procedures of construction selected by any contractors or subcontractors or the safety precautions and programs incident to the work of any contractors or subcontractors.
- 4.1.19 Neither the City nor the Engineer, nor its Consultants, shall hold the other liable for any claim based upon, arising out of, or in any way involving the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants.
- 4.1.20 Neither the City nor the Engineer, nor its Consultants, shall hold the other liable for any claim based upon, arising out of, or any way involving the specification or recommendation of asbestos, in any form, or any claims based upon use of a product containing asbestos.
- 4.1.21 Engineer hereby represents and warrants that it does not fail or refuse to collect or remit South Dakota or City sales or use tax for transactions which are taxable under the laws of the State of South Dakota.

#### 4.2 City of Rapid City NonDiscrimination Policy Statement

In compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination act of 1975, the Americans with Disabilities Act of 1990, and other nondiscrimination authorities it is the policy of the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701-5035, to provide benefits, services, and employment to all persons without regard to race, color, national origin, sex, disabilities/handicaps, age, or income status. No distinction is made among any persons in eligibility for the reception of benefits and services provided by or through the auspices of the City of Rapid City.

Engineer will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission, its agencies or representatives, to ascertain compliance with the above provisions.



This section shall be binding on all subcontractors or suppliers.

## **Section 5—Payments to the Engineer**

### **5.1 Schedule of Pay Rates**

The City will pay the Engineer for services rendered or authorized extra work according to the Engineer's hourly and reimbursable rate schedule described in Exhibit C.

### **5.2 Fee**

The maximum amount of the fee for the services as detailed in Section 1.2 shall not exceed **\$ 23,526.00** unless the scope of the project is changed as outlined in Section 4. If expenses exceed the maximum amount, the Engineer shall complete the design as agreed upon here without any additional compensation. Sub task dollar amounts may be reallocated to other tasks as long as the total fee is not exceeded. Prime consultant may not mark up sub-consultant or sub-contractor services.

### **5.3 Progress Payments**

Monthly progress payments shall be processed by the City upon receipt of the claim as computed by the Engineer based on work completed during the month per the hourly rates and allowable reimbursable as established in Section 5.1 and approved by the City.

Net payment to the Engineer shall be due within forty-five (45) days of receipt by the City.

## **Section 6—Completion of Services**

The Engineer shall complete services on or before **July 25, 2013** based on a notice to proceed on or before **May 17, 2013**.

## **Section 7—Insurance Requirements**

### **7.1 Insurance Required**

The Engineer shall secure the insurance specified below. The insurance shall be issued by insurance company(s) acceptable to the City and may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance including any policy endorsements shall be provided to the City prior to or upon the execution of this Agreement.



## 7.2 Cancellation

The Engineer will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The Contractor agrees to hold the City harmless from any liability, including additional premium due because of the Contractor's failure to maintain the coverage limits required.

## 7.3 City Acceptance of Proof

The City's approval or acceptance of certificates of insurance does not constitute City assumption of responsibility for the validity of any insurance policies nor does the City represent that the coverages and limits described in this agreement are adequate to protect the Engineer, its consultants or subcontractors interests, and assumes no liability therefore. The Engineer will hold the City harmless from any liability, including additional premium due, because of the Engineer's failure to maintain the coverage limits required.

## 7.4 Specific Requirements

- 7.4.1 Workers' compensation insurance with statutory limits required by South Dakota law. Coverage B-Employer's Liability coverage of not less than \$500,000 each accident, \$500,000 disease-policy limit, and \$500,000 disease-each employee.
- 7.4.2 Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury and property damage liability coverage with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. If the occurrence form is not available, claims-made coverage shall be maintained for three years after completion of the terms of this agreement. The policy shall name the City and its representatives as an additional insured.
- 7.4.3 Automobile liability insurance covering all owned, nonowned, and hired automobiles, trucks, and trailers. The coverage shall be at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.
- 7.4.4 Professional liability insurance providing claims-made coverage for claims arising from the negligent acts, errors or omissions of the Engineer or its consultants, of not less than \$1,000,000 each occurrence and not less than \$1,000,000 annual aggregate.



Coverage shall be maintained for at least three years after final completion of the services.

### **Section 8—Hold Harmless**

The Engineer hereby agrees to hold the City harmless from any and all claims or liability including attorneys' fees arising out of the professional services furnished under this Agreement, and for bodily injury or property damage arising out of services furnished under this Agreement, providing that such claims or liability are the result of a negligent act, error or omission of the Engineer and/or its employees/agents arising out of the professional services described in the Agreement.

### **Section 9—Independent Business**

The parties agree that the Engineer operates an independent business and is contracting to do work according to his own methods, without being subject to the control of the City, except as to the product or the result of the work. The relationship between the City and the Engineer shall be that as between an independent contractor and the City and not as an employer-employee relationship. The payment to the Engineer is inclusive of any use, excise, income or any other tax arising out of this agreement.

### **Section 10-Indemnification**

If this project involves construction and Engineer does not provide consulting services during construction including, but not limited to, onsite monitoring, site visits, site observation, shop drawing review and/or design clarifications, City agrees to indemnify and hold harmless Engineer from any liability arising from the construction activities undertaken for this project, except to the extent such liability is caused by Engineer's negligence.

### **Section 11-Controlling Law and Venue**

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of South Dakota, without regard to any conflicts of law provisions. Parties agree to submit to the exclusive venue and jurisdiction of the State of South Dakota, 7<sup>th</sup> Judicial Circuit, Pennington County.

### **Section 12-Severability**

Any unenforceable provision herein shall be amended to the extent necessary to make it enforceable; if not possible, it shall be deleted and all other provisions shall remain in full force and effect.






**Section 13—Funds Appropriation**

If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this agreement, this agreement shall impose no obligation on the City for payment. This agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of the Engineer, its successors or assignees, for any further payments. For future phases of this or any project, project components not identified within this contract shall not constitute an obligation by the City until funding for that component has been appropriated.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

**City of Rapid City:**

  
\_\_\_\_\_  
MAYOR

**Engineer:**

  
\_\_\_\_\_  
CETEC Engineering Services, Inc.

DATE: 5-6-13

DATE: 5-6-13

ATTEST:

  
\_\_\_\_\_  
FINANCE OFFICER

**Reviewed By:**

  
\_\_\_\_\_  
Morgan Gagliano, PROJECT MANAGER

DATE: 4-22-13

CITY'S DESIGNATED PROJECT  
REPRESENTATIVE

ENGINEERING FIRM'S DESIGNATED  
PROJECT REPRESENTATIVE

NAME: Morgan Gagliano, P.E.  
PHONE: 605-394-4154  
EMAIL: morgan.gagliano@rcgov.org

NAME: Greg Wierenga, P.E.  
PHONE: 605-341-7800  
EMAIL: gregw@cetecengineering.com



## **Exhibit A**

### **Scope of Services**

**Project:** Investigation of Irrigation Water Source for Soccer Complex  
City of Rapid City Project Number 13-2098, CIP #50963

**Engineer:** CETEC Engineering Services, Inc.  
1560 Concourse Drive  
Rapid City, SD 57703

#### **General Description of Work:**

Perform engineering study and analysis for irrigation water source alternatives for the proposed City Soccer Complex planned for the Elk Vale Road site in northeast Rapid City. Determine technical feasibility and cost effectiveness of irrigation alternatives, including City municipal water supply, local shallow alluvial aquifer (Box Elder Creek) and regional deep aquifers, including Inyan Kara, Minnelusa and Madison.

#### **Scope of Services:**

1. Kick-off meeting with City, current soccer complex design consultant (FourFront Design), City Water Department, Public Works and Parks Department staff.
2. Review Soccer project background information and studies completed by others relative to irrigation needs, including seasonal considerations, water application rates and frequency, coverage area, project phasing and related criteria.
3. Based upon water use criteria provided by others, develop maximum irrigation supply requirements based on annual, peak seasonal, daily and instantaneous water demands. Criteria will be based upon an initial project size of 12 fields and possible future expansion to 25 fields.
4. Assemble and review available technical studies, reports, hydrology studies, maps and data regarding the water source alternatives. Such documents may be from SDDENR, USGS, SDSM&T and others.
5. Consult with knowledgeable professionals with SDDENR, USGS, SDSM&T and well drillers regarding the available water sources and obtain supplemental input and guidance as may be offered. This may include discussions about water availability, quantity, reliability and permitting issues.
6. Obtain well logs of existing wells located near or within reasonable distance from the site to verify or obtain information regarding depths, thicknesses, and yields of groundwater sources.
7. Identify potential deep well and groundwater sources. Make a determination of probable water quality from each potential source and assess overall suitability for turf irrigation without supplemental treatment.

8. Develop schematic level designs for obtaining and delivering irrigation water to the site for all technically feasible sources of supply. Such designs may include well construction, pumps, pipeline and above-ground or below-ground storage facilities. The schematic drawings may consist of well profiles, site plan, hydraulic gradeline, tank outline, flow diagram, and piping line diagrams.
9. Meet with City staff from time to time during the study period, review findings and re-direct effort as may be appropriate.
10. Prepare capital cost estimates for schematic level water supply design alternative.
11. Prepare annual operating cost estimates for each alternative. The operating costs for the City municipal supply alternative will use City water rates for commercial irrigation per Ordinance 13.08.430.
12. Evaluate and compare life cycle costs for each alternative based upon 20 to 40-year service periods. Perform life cycle costs for both initial and expanded project size (12 fields versus 25 fields).
13. Summarize the study methodology, findings, data and costs in a final report. After City review and comment of report draft, publish report in up to 10 hard copies and provide reports and CD of report to the City.

**Services Not Included:**

1. Field investigations, such as drilling test wells, pump testing, water quality sampling and laboratory testing are not included. In the event that field studies or laboratory work is determined to be needed for a reliable evaluation, such field work would constitute additional services not included in the fee estimate included in Appendix B.
2. Irrigation demand, sensitivity relative to local soil types, grass turf species and other design variables will be determined by others. This data will be provided to CETEC.
3. Irrigation system layout, pipe sizing, spray application methods and controls will not be included in capital cost of life cycle cost estimates. Pressure booster pumps and the cost of electrical power for pressure boosting are anticipated to be included in schematic designs and cost evaluations to allow cost comparisons between the various alternatives.
4. Water treatment designs or analysis.
5. Preliminary design, final design, bidding or construction services.
6. Flood plain analysis.
7. Hydraulic piping model for irrigation or municipal water lines.
8. Public meetings or presentations of findings.
9. City to provide CETEC with GIS contours, aerial map, existing and proposed municipal water pipe network, and soccer field layouts in electronic format.
10. Legal or topographic surveying is excluded.

11. Work beyond 2013.
12. Geotechnical investigations, reports, or test holes. If this work is required, it will be performed by others under separate contract with the City.

**Schedule**

The Engineer shall complete services within 70 calendar days from May 17, 2013 (July 25, 2013), based on Council approval on May 6, 2013, notice to proceed issued within ten days of Council approval, and receipt of City provided data and electronic files in a timely manner.

## EXHIBIT B

**PROFESSIONAL SERVICES for  
Investigation of Irrigation Water Source for Soccer Complex  
Project No. 13-2098 / CIP 50963  
CETEC Engineering Services, Inc.  
TASK SCHEDULE  
April 16, 2013**

<b>TASK</b>	<b>Cost</b>
1 Kickoff Meeting.	\$ 604.00
2 Review background information regarding soccer project.	\$ 844.00
3 Develop irrigation usage and demand criteria.	\$ 1,200.00
4 Assemble and Review technical background data relative to irrigation water supply alternative.	\$ 960.00
5 Consultation with SDDENR, USGS, SDSM&T regarding source alternatives and water rights.	\$ 1,208.00
6 Obtain and review well logs.	\$ 480.00
7 Review and evaluate water quality issues.	\$ 1,080.00
8 Develop alternative designs for viable alternatives. Schematic drawings.	\$ 5,136.00
9 City meetings, review of findings on periodic basis.	\$ 1,456.00
10 Capital Cost Estimates.	\$ 3,018.00
11 Operating Cost Estimates.	\$ 1,624.00
12 Life Cycle Cost analysis, initial and long-term.	\$ 1,144.00
13 Summary Report	\$ 4,522.00
Travel, Printing and Reimbursable Expenses Allowance	\$ 250.00
<b>Total Professional Services</b>	<b>\$ 23,526.00</b>

**Exhibit C**  
**2013 Hourly Labor Rates**  
**and**  
**Reimbursable Expenses**

**Project:** Investigation of Irrigation Water Source for Soccer Complex  
City of Rapid City Project Number 13-2098, CIP #50963

**Engineer:** CETEC Engineering Services, Inc.  
1560 Concourse Drive  
Rapid City, SD 57703

2013	
Principal	\$124.00/hr.
Project Manager	\$120.00/hr.
CADD Technician	\$74.00/hr.
Clerical	\$46.00/hr.

**Reimbursable Expenses**

Project Travel.....	\$0.65/mile
GPS Equipment.....	\$40/hour
Geo XH GPS Rover.....	\$15/hour
UTV Ranger.....	\$15/hour
ATV Equipment.....	\$15/hour
Blueline Printing.....	Actual Cost
Outside Printing.....	Actual Cost
Subconsultants.....	Actual Cost
Wastewater Flow Meter.....	\$200/week
Telephone, Perdiem.....	Non-Reimbursable

**Notes:**

1. Rates effective until December 31, 2013.