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

Project Name & Number: Meade Hawthorne Drainage Basin Improvements, Detention Ponds 224 and 225, Project # 20-2596  
CIP #: 51296

Project Description: Professional Services Contract to evaluate the hydraulics of two (2) existing detention ponds in the Meade Hawthorne Drainage Basin that are currently configured in series. Engineer will recommend improvements which may including reconstructing the failing embankment separating the two ponds or combining the two ponds into one pond.

Consultant: Longbranch Civil Engineering, Inc.

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Addendum No:

Amendment Description:

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Total

Agreement Review & Approvals

Project Manager:  
Date: 6-18-20  
Brandon Quiett

Compliance Specialist:  
Date: 6-18-20  
Kara Coates

Department Director:  
Date: 6-18-20  
Al Ryan

FINANCE OFFICE USE ONLY  
(Note to Finance: Please write date of Agreement in appropriate space in the Agreement document)  
Date: 6-18-20  
Finance Office

Routing Instructions

Route two originais of the Agreement for review and signatures.

Finance Office - Retain one original

Project Manager - Retain second original for delivery to Consultant

Public Works - Engineering - Project Manager

10SA Authorization for Mayor & Finance Officer to Sign

Rev. 06/06/09
Agreement Between City of Rapid City and Longbranch Civil Engineering, Inc. for Meade Hawthorne Drainage Basin Improvements, Detention Ponds 224 and 225
Project No. 20-2596 / CIP No. 51296

AGREEMENT made ____________________________________________ 20____, between the City of Rapid City, SD (City) and Longbranch Civil Engineering, Inc., (Engineer), located at 821 Columbus Street, Suite 1, Rapid City, SD 57701. City intends to obtain services for Meade Hawthorne Drainage Basin Improvements, Detention Ponds 224 and 225, Project No. 20-2593 CIP No. 51296. The scope of services is as described within this document and as further described in Exhibits A, B, C, and D (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, C, and D (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 job site, or should it become known in any way that such materials may be present at the job site 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 in 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 $29,620.00 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 12/31/2021 based on award date of 7/6/2020.

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-employee.

7.4.2 Commercial general liability insurance providing 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 may be provided. Claims-made coverage shall continue through the term of this Agreement, and Engineer shall purchase at its sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) shall demonstrate through Certificates of Insurance that Engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items 1), 2), or 3) will continue for at least a period of 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. The policy shall name the City and its representatives as an additional insured.

7.4.4 Professional liability insurance providing 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. If this policy provides for claims-made coverage, the claims-made coverage shall continue through the term of this Agreement, and Engineer shall purchase at its sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) shall demonstrate through Certificates of Insurance that Engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items 1), 2), or 3) will continue for at least a period of three years after completion of the terms of this Agreement.

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, 7th 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 Steve Allender

DATE: ________________________________

Engineer: ________________________________
Kale McNaboe, PE
Longbranch Civil Engineering, Inc.

DATE: 6-17-20
ATTEST:

Pauline Sumption  
Finance Officer

Reviewed By:  
Brandon Quie'tt, PE  
Project Engineer

DATE: 6/17/2020

CITY'S DESIGNATED PROJECT REPRESENTATIVE  
NAME: Brandon Quie'tt, PE  
PHONE: 605-394-4154  
EMAIL: brandon.quie'tt@rcgov.org

ENGINEERING FIRM'S DESIGNATED PROJECT REPRESENTATIVE  
NAME: Paul Kraft, PE  
PHONE: 605-721-4040  
EMAIL: paul@longbrancheng.com
REQUEST FOR PROPOSALS
For Engineering Services For
Meade/Hawthorne Drainage Basin Improvements
Detention Ponds 224 & 225
PROJECT NO. 20-2596, CIP 51296

EXHIBIT A
SCOPE OF SERVICES REQUESTED

Professional services consist of One (1) Task: Preliminary Design Services

At the conclusion of the first task the City reserves the right to retain Longbranch Civil Engineering, Inc. for Two (2) Additional Tasks: Final Design Services, and Bidding Services. Service descriptions for these last Two Tasks will be outlined at a future date.

TASK 1 - PRELIMINARY DESIGN RECOMMENDATION 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 detail project concept and scope. The consultant shall prepare an agenda, take minutes, and distribute minutes.

1.2 Review background information and any other resources as necessary.

1.3 Perform site surveys sufficient for design plan preparation. The route and topography survey shall be in NAD 83 (2011) NAVD88 South Dakota State Plane South Zone. The horizontal and vertical coordinates shall be established from the Rapid City Primary Control Network.

1.4 Engineer to attend meetings with property owners with regards to possible easements if necessary.

1.5 Engineer to prepare easement exhibits as well as provide property owner deeds. The City shall be responsible for preparing the easement documents as well as obtaining any property owner signatures required for the construction of the project.
1.6 Conceptual Design Reports and Construction Plans
The engineer shall prepare, at minimum, three (3) conceptual reconstruction plans for the City of Rapid City. The conceptual plans have been generally discussed as the following:

1.) Minor rehabilitation of each pond with focus on repairing the berm separating Pond 224 and Pond 225. Pond 224 and Pond 225 to remain separate entities.

2.) Major rehabilitation of Pond 224 and Pond 225. Concept includes regrading of each pond with possible expansion if warranted. Pond 224 and Pond 225 to remain separate entities.

3.) Determine if Pond 224 and Pond 225 can be combined and expanded.

Hydrologic and hydraulic analyses will be required for each concept as well as corresponding engineering report(s). Preliminary construction plans shall be completed for each conceptual design as well. A more detailed summary of required services 1.6 has been included below is subcategories “a” through “g”.

1.6a The engineer shall prepare, at minimum, three (3) conceptual designs for the City’s review. The conceptual designs will include, at minimum, preliminary grading plans with approximate excavation values and conceptual pond outlet structure design.

1.6b Hydrologic and hydraulic calculation reports shall be provided for each of the three (3) conceptual designs. The stormwater analyses shall meet the requirements of the Rapid City Infrastructure Design Criteria Manual, 2012 Edition. The engineer shall also determine the downstream effects of reconstruction project within the Hawthorne Drainage Basin.

1.6c The engineer shall attempt to incorporate a water quality control volume as defined by the Rapid City Stormwater Manual, 2009 Edition into the conceptual pond designs. If the inclusion of a water quality control volume creates conflicts with the overall peak discharge of the detention ponds, the engineer shall consult with the City to determine if a lesser volume is acceptable.

Exhibit A
Project No. 20-2596/ CIP No. 51296
1.6d The engineer shall provide the City of Rapid City with a list of advantages and disadvantages for each conceptual design. The list shall include at minimum the following:
- A comparison of peak flows between each concept
- A discussion on the effects to downstream infrastructure for each concept
- Discussion on the ease of constructability
- Determination if any adverse effects occur if the ponds are above capacity and the emergency spillways are activated
- Provide a discussion of long-term effects by constructing each conceptual design.

1.6e Engineer to determine a probable estimate of construction costs for each conceptual design. The costs associated with each pond concept shall also be incorporated into the list of advantages and disadvantages described under previous item 1.6d.

1.6f The engineer shall provide the City of Rapid City with one (1) physical and one (1) digital copy (PDF) of each conceptual design. This includes all Engineering Reports created for this project as well as any Preliminary Construction Plans.

1.6g The engineer shall attempt to incorporate vehicle access for maintenance purposes into each conceptual design. Additionally, the engineer shall attempt to design an outlet structure that can be easily accessed when the pond is empty as well as provide some type of emergency access if the pond is under clogged conditions.

1.7 Engineer to verify with the Army Corps. Of Engineers if the proposed project requires any specific wetland mitigation or other 404 permitting. If wetland mitigation is required, the engineer shall include a service item in Task 2 if the City elects to move forward with final construction services.

1.8 Attend meetings with City engineering staff to discuss detention pond concepts as well as to determine what the next course of action is for the project.

**TASK 2 - FINAL DESIGN SERVICES:**

This task consists of all services necessary to take project from Task 1 Preliminary Design Recommendation Services through the Final Design Services. The services required to finalize Task 2 shall be determined at a later date if the City of Rapid City elects to pursue final design plans and specifications.

**TASK 3 – BIDDING SERVICES:**

This task consists of all services necessary for the administration of the Bidding Services of the project. Services associated with Task 3 shall be determined at a later date if the City of Rapid City elects to pursue final design plans and specifications.
## EXHIBIT B

### Menaul/Hawthorne Drainage Basin Improvements, Ponds 224 and 225

**PROJECT NO. 20-2596 / CIP NO. 91296**

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<td>Review Background Information</td>
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<td>1.3</td>
<td>Preliminary Site Survey and Property Research</td>
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<td>1.4</td>
<td>Meet With Individual Property Owners Regarding Estuaries</td>
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<td>1.5</td>
<td>Prepare Easement Documents if Necessary</td>
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<td>1.6</td>
<td>Conceptual Design Submittal (Does not include hydrologic and hydraulic study of ponds)</td>
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<td>1.6a</td>
<td>Provide Three (3) Reconstruction Concept Exhibits (Grading Plans and Preliminary Stormwater Infrastructure Accuracies)</td>
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<td>1.6b</td>
<td>Provide Hydrologic and Hydraulic Calculations for Each Concept</td>
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<td>1.6c</td>
<td>Determine If Water Quality is Achievable in Reconstructed Pond Concepts</td>
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<td>1.6d</td>
<td>Provide Peir and Cost of Each Pond Concept</td>
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<td>1.6e</td>
<td>Provide a Preliminary Estimate of Probable Construction Costs for Each Pond Concept</td>
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<td>1.6f</td>
<td>Provide an Engineering Report Summarizing all Calculations, Recommendations, and Cost Estimates (1 Physical &amp; 1 Plan)</td>
<td>$4,100.00</td>
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<td>1.7</td>
<td>Determine If Wetlands Mitigation (60 Permitting) Is Necessary</td>
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<td>1.8</td>
<td>Meet With City Staff to Discuss Pond Concepts and Determine the Next Course of Action (If Necessary)</td>
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**TASK #1 TOTAL COST =**

$20,629.00

*Note: Table 2 may be negotiated separately at a later date at the discretion of the City of Rapid City.*

*Although dollar values have been provided for each task, Longbranch Civil Engineering, Inc. shall retain the right to relocate monies to other tasks, subject to the maximum limits set forth above.*
### EXHIBIT C
**EFFECTIVE LABOR RATES**

**LONGBRANCH CIVIL ENGINEERING, INC.**

**HOURLY RATES AND REIMBURSABLE COSTS**

2020

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