

AGREEMENT FOR
PROFESSIONAL SERVICES

THIS AGREEMENT for professional services made and entered into this _____ day of _____, 2005, by and between the City of Rapid City, South Dakota, 300 6th Street, Rapid City, South Dakota 57701, hereinafter referred to as the "OWNER" and Alliance of Architects and Engineers, 706 West Boulevard, Rapid City, South Dakota 57701, hereinafter referred to as the "ENGINEER".

WHEREAS it is the intention of the OWNER to complete preliminary and final design for City Project numbers ST04-1070, ST04-1077, ST04-1432 and ST04-1449. Specifically, Kansas City Street from East Boulevard to 8th Street and 2nd, 3rd, 4th, 6th and 7th Streets from Kansas City Street to Omaha Street. The Alliance of Architects and Engineers, along with sub-consultants, will conduct preliminary design / investigative services for all four projects in 2005. From the results of the preliminary design a construction sequencing, schedule and phasing plan will be selected. Final design on each of the four projects will then be completed.

The ENGINEER'S work on the project includes the:

- Design for the reconstruction of water mains and service lines.
- Design for the reconstruction of sanitary sewer mains and service lines.
- Design for the reconstruction of storm sewer mains and inlets.
- Design for the reconstruction of the street pavement utilizing Portland Cement Concrete and / or Asphalt Concrete Pavement.
- Design for the reconstruction of curb and gutter with pedestrian nodes and associated areas of sidewalk.
- Design for the installation of new street signs and pavement markings.
- Design for the any other features required or identified in the Downtown Development Plan.
- Landscape design to enhance the overall appearance of the selected streets.
- Provide a Public Relations program to communicate with and enlist ideas from appropriate stakeholders in the projects.
- Construction Phase service are to be negotiated on a phase by phase basis;

said improvements hereinafter referred to as the "PROJECT", and

WHEREAS the OWNER desires to provide for Design and Construction professional engineering services for the Project, and

WHEREAS the ENGINEER represents that he is qualified and thoroughly familiar with the Project, and

WHEREAS the ENGINEER represents that he is in compliance with the South Dakota statues relating to the furnishing of Design and Construction professional engineering services as required for the Project;

NOW THEREFORE, the OWNER and the ENGINEER, in consideration of the premises, the independent and mutual covenants herein, agree in respect of the performance of professional engineering services by the ENGINEER and the payment for those services by the OWNER, as set forth herein.

SECTION 1 - SERVICES OF THE ENGINEER

The services to be provided by this Agreement shall be comprised of the following professional engineering services as the same may be required during the Design and Construction Phases of the Project referred to therein. No work is to commence under this Agreement until specific authorization is received from the OWNER. The services to be provided by the ENGINEER shall be understood and agreed to consist of the following:

1.1 BASIC SERVICES - DESIGN PHASE

1.1.1 Survey. Perform the necessary design survey as required prior to and during the Design Phase of the Project. The design survey shall consist of horizontal and vertical control data pertaining to the location of the existing streets, sidewalks and utilities and for the proposed location of new water improvements and the required or recommended appurtenances. The design survey shall also provide the necessary information to design the repairs and/or improvements to the affected roadways within the construction corridor as discussed in the Preliminary Design Report

1.1.2 Subsurface Exploration. If subsurface exploration, including soil borings, tests, analysis and professional interpretations, are required to determine soil and rock conditions, the ENGINEER will assist the OWNER in selecting a firm capable of providing these services and will provide boring location information to the firm performing said exploration. The exploration, testing and interpretations report will be the OWNER'S responsibility and will be provided to the ENGINEER for his use in the design and construction observation of the Project.

1.1.3 Plans and Specifications. Prepare detailed construction plans and specifications necessary for the construction of the street improvements, the required or recommended appurtenances and for the repair and upgrade of infrastructure.

1.1.4 Project Cost Estimates. Advise the OWNER of the ENGINEER'S latest opinion regarding probable project cost adjustments caused by changes in scope, design requirements or construction costs and furnish a revised opinion of probable project costs based on the completed plans and specifications.

Since the ENGINEER has no control over the labor, materials or equipment, or over the construction contractor's methods of determining prices, or over the competitive bidding or market conditions, his opinions of probable project construction costs provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as a design professional familiar with the construction industry, but the ENGINEER does not and cannot guarantee that proposals, bids or the construction cost will not vary from opinions of probable cost prepared by him.

1.1.5 Contract Documents. Prepare and provide Advertisements for Bids, Information for Bidders, Bid Form, Supplementary Conditions and other documents necessary to complete the contract documents for construction of the project.

1.1.6 Furnish Documents. Furnish three (3) copies of the plans, specifications and contract documents for the review and approval of the OWNER and applicable State and Federal governmental agencies.

1.2 BASIC SERVICES - CONSTRUCTION PHASE (Services and associated fees to be negotiated on a phase by phase case depending on the needs of the OWNER at the time each phase proceeds to the construction) Services may include:

1.2.1 Bid Letting. Furnish to the contractors and builder's exchanges copies of the plans and specifications. The costs for the plans and specifications will be reimbursable to the ENGINEER by the OWNER at the rate of cost per set to the ENGINEER. Assist the OWNER in conducting the bid opening and in the preparation of contract documents with the successful bidder.

1.2.2 Construction Surveying. Perform the necessary construction staking as required to provide horizontal and vertical control for the contractor to construct the facilities and other required or recommended appurtenances.

1.2.3 Construction Observation. Provide periodic on-site construction observation during the course of construction to review the work of the contractor for compliance with the plans and specifications.

1.2.4 Testing. An Outside Testing Consultant will be required to provide testing personnel and equipment during the course of construction as necessary for compliance with the plans and specifications. The cost of an Outside Testing Consultant is not included in this contract.

1.2.5 Construction Administration. Provide construction administration for the project consisting of reviewing contractor's payment requests, attending progress meetings, shop drawing reviews, preconstruction meeting, final progress review and issuing the Certificate of Substantial Completion.

1.2.6 "As-Staked" Plans. At the conclusion of construction provide one set of "as-staked" plan prints to the OWNER.

1.3 ADDITIONAL SERVICES

If authorized by the OWNER in writing, the ENGINEER will provide additional professional services in connection with the Project as set forth below.

1.3.1 Applications. Preparation of applications and supporting documents for government grants, loans or advances including the preparation of sewer use ordinances and user fee documents.

1.3.2 Changes in Scope. Services due to changes in scope of the Project or its design, drawings or specifications which have previously been approved by the OWNER, or when such revisions are due to causes beyond the control of the ENGINEER. If Contractor exceeds time originally specified in contract documents, ENGINEER shall be compensated for services rendered beyond that Contract time as Additional Services.

1.3.3 Alternate Bids. Preparation of design documents for alternate bids or for out-of-sequence work requested by the OWNER.

1.3.4 Exhibits. Preparation of detailed renderings, exhibits or scale models for the Project.

1.3.5 Additional Documents. Furnish any additional copies of the plans, specifications or contract documents requested by the OWNER.

1.3.6 Travel. Providing services requiring out-of-town travel for the ENGINEER other than visits to the Project site as required to complete Section 1.1.1 through 1.1.6 inclusive. All other travel including travel to the Project site required to complete Section 1.2.1 through 1.2.6 inclusive and Section 1.3, shall be reimbursable to the ENGINEER at the rates indicated in Appendix A.

1.3.7 Expert Witness. Providing services as an expert witness for the OWNER in connection with litigation or other proceedings involving the Project.

1.3.8 Easements. The ENGINEER shall assist the OWNER when requested in filing applications, drafting plats and negotiating for easements, rights-of-way and property needed to construct the PROJECT. In connection with such negotiations, the ENGINEER shall furnish such maps and plans as are necessary.

1.3.9 Other Services. Providing other services not otherwise provided for in the Agreement, including services normally furnished by the OWNER as described in Section 2 "OWNER'S RESPONSIBILITIES".

SECTION 2 - OWNER'S RESPONSIBILITY

OWNER shall:

2.1 PROJECT REQUIREMENT. Provide full information as to the OWNER'S requirements for the Project.

2.2 AVAILABLE INFORMATION. Assist the ENGINEER by placing at his disposal all available information pertinent to the Project including previous reports and any other data relative to the Project.

2.3 ADDITIONAL DATA. Furnish to the ENGINEER, as required by him for performance of this Basic Services, data prepared by or services of others, such as soils testing, hydrographic surveys, laboratory tests and interpretations of all of the foregoing; property, boundary, easement right-of-way, topographic restrictions; and other special data or consultations not covered in Section 1 of this Agreement; all of which the ENGINEER may rely upon in performing his services.

2.4 ACCESS TO PROPERTY. Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his services under this Agreement.

2.5 OWNER'S REVIEW. Examine all studies, reports, sketches, drawings, proposals and other documents presented by the ENGINEER, obtain advice of an attorney, insurance counselor and others as the OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.

2.6 ADDITIONAL SERVICES. Provide such legal, accounting and insurance counseling services as may be required for the Project.

2.7 OWNER'S REPRESENTATIVE. Designate in writing a person or persons to act as the OWNER'S representative with respect to the ENGINEER'S services. Such person shall have complete authority to transmit instructions, receive information, and interpret and define the OWNER'S policies and decisions with respect to the ENGINEER'S services.

2.8 CHANGES OR DEFECTS. Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project, or changed circumstances.

2.9 APPROVALS AND PERMITS. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

2.10 ADDITIONAL ENGINEERING. Furnish, or direct ENGINEER to provide necessary additional services as stipulated in Section 1.3 of this Agreement or other services as required.

2.11 COSTS. Bear all costs incident to compliance with the requirements of this Section.

SECTION 3 - PERFORMANCE TIME

3.1 PROGRESS OF PROJECT. The provisions of this Section 3 and the various rates of compensation for the ENGINEER'S services provided for in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. The ENGINEER'S obligation to render services hereunder will extend for a period which may reasonably be required to provide the services.

3.2 DELAYS. If the ENGINEER'S services for the Project are delayed or suspended in whole or in part by the OWNER or governmental authorities for more than three months for reasons beyond the ENGINEER'S control, the ENGINEER shall on written demand to the OWNER (but without termination of this Agreement) be paid for services rendered to the date of notice of suspension. If such delay or suspension extends for more than six months for reasons beyond the ENGINEER'S control, the payments and various rates of compensation provided for in this Agreement shall be subject to renegotiation.

3.3 SERVICES SCHEDULE. Services will be provided by the ENGINEER in accordance with the following schedule:

Contract Negotiations	April 29, 2005
Notice to Proceed	May 16, 2005
Preliminary Design (All Phases)	September 19, 2005
95% Plans, Specification and Engineers Estimate	January 9, 2006
100% Plans and Specifications (First Phase)	January 30, 2006
100% Plans and Specifications (Second Phase)	January 4, 2007
100% Plans and Specifications (Third Phase)	January 5, 2008
100% Plan and Specifications (Forth Phase)	January 9, 2009

3.3.1 Commencement and Duration. This Agreement shall commence with the receiving of a written "Notice to Proceed" from the OWNER and shall continue to be in full force and effect until the completion of the Design and Construction Phases, unless terminated as otherwise provided.

3.3.2 Completion Time. Notwithstanding the provisions of Section 3.3.1 above, it is further agreed that the ENGINEER shall complete the scope of work stated in Sections 1.1. as stated in section 3.3. This time schedule shall be modified if necessary to meet State and Federal agency requirements upon mutual agreement of all parties.

SECTION 4 - PAYMENT TO ENGINEER

4.1 BASIC SERVICES PAYMENT - DESIGN PHASE. For the services of the ENGINEER as hereinbefore provided in Section 1.1.1 through Section 1.1.6 of the Agreement, the OWNER shall compensate the ENGINEER in a Lump Sum Fee Amount of (\$404,585.00) **Four Hundred and Four Thousand, Five and Eighty Five Dollars.**

For these services the OWNER shall make prompt monthly payments to the ENGINEER based on monthly billings submitted by the ENGINEER for the work completed.

4.2 BASIC SERVICES PAYMENT - CONSTRUCTION PHASE. For the services of the ENGINEER as herein before provided in Section 1.2.1 through Section 1.2.6 of the Agreement, the OWNER and the ENGINEER shall negotiate final scope and fee based on the needs of the OWNER at the time of construction.

For these services the OWNER shall make prompt monthly payments to the ENGINEER based on monthly billings submitted by the ENGINEER and in accordance with the personnel rates furnished by the ENGINEER and included with this Agreement.

4.3 CREDIT POLICY. In the event of failure of the OWNER to make any payment due the ENGINEER within thirty days after receipt of the ENGINEER'S statement, such amount shall bear interest at the rate of 1.00 percent (1.0%) per month commencing with the thirtieth day. This is an annual percentage rate of twelve percent (12%). If the OWNER fails to make payment due the ENGINEER within sixty days after receipt of the ENGINEER'S statement, the ENGINEER may, seven days after giving notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due to him for services and expenses.

4.4 ADDITIONAL WORK PAYMENT. For services of the ENGINEER as hereinbefore provided in Section 1.3 of this Agreement, the OWNER shall compensate the ENGINEER as follows:

4.4.1 Payment for Requested Services. For services requested by the OWNER in writing in Section 1.3.1. through 1.3.9 of this Agreement, the OWNER and the ENGINEER shall negotiate a fee prior to furnishing the services.

4.5 COMPENSATION ADJUSTMENT. It is agreed that the Lump Sum Fee amount in Section 4.1 of this Agreement shall be full compensation to the ENGINEER for the satisfactory completion of all work as set out in Sections 1.1 contained herein. No increases or decreases to this Lump Sum Fee shall be made except in the following circumstances.

4.5.1 Change in Scope. A change in scope of the project requested or approved in writing by the OWNER which materially and substantially increases or decreases the work of the ENGINEER shall be cause for the negotiation of an equitable adjustment of the Fee. Any claim of the ENGINEER for adjustment in either cost or time must be asserted in writing within 30 days from the date of receipt by the ENGINEER of the notification of change unless the OWNER grants a further period of time.

4.5.2 Renegotiation. A protracted time elapse as provided in Section 3.2. shall be grounds for the renegotiation of the Fee as therein provided.

SECTION 5 - TERMINATION

5.1 DEFAULT. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party: Provided, that no such termination may be affected unless the other party is given not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation with the terminating party prior to termination.

5.2 CONVENIENCE. This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience: Provided, that such termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new Phase) and that the ENGINEER is given not

less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation with the terminating party prior to termination.

5.3 PAYMENT. If termination for default or convenience is affected by the OWNER, an equitable adjustment in the price provided for in this Agreement shall be made, but no amount shall be allowed for anticipated profit on unperformed services or other work. If termination is affected by the OWNER, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

5.4 COMPLETION BY OWNER. Upon termination pursuant to Sections 5.1. and 5.2. above, the OWNER may take over the work and prosecute the same to completion by Agreement with another party or otherwise. Any work taken over by the OWNER for completion will be completed at the OWNER'S risk, and the ENGINEER will assume no responsibility for claims or damages arising out of the use of the ENGINEER'S work.

5.5 RE-USE OF DOCUMENTS. All documents, including drawings and specifications, prepared or furnished by ENGINEER pursuant to this Agreement are instruments of service in respect of the Project, and ENGINEER shall retain an ownership and property interest therein, whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for re-use by OWNER or others on extensions of the Project or on any other project. Any re-use without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to ENGINEER with respect to any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

5.6 ACTUAL DETERMINATION. If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not so failed, the termination shall be deemed to have been affected for the convenience of the OWNER.

SECTION 6 - ADDITIONAL CONSIDERATIONS

6.1 SUCCESSORS AND ASSIGNS. The OWNER and the ENGINEER each binds himself and his partners, successors, executors, administrators and assigns of such other party, in respect of all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER shall assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

6.2 LIMITATION OF LIABILITY. Notwithstanding any other provisions of the Agreement, and unless otherwise subject to a greater limitation, ENGINEER'S total liability to OWNER for any loss or damage, including but not limited to special and consequential damages arising out of or in connection with the performance of services or any other cause, including ENGINEER'S professional negligent acts, errors or omissions, shall not exceed the greater of \$1,000,000.00 or the total compensation received by ENGINEER hereunder, and OWNER hereby releases ENGINEER from any liability above such amount. The ENGINEER is responsible for writing this limitation of liability clause into all construction contracts arising out of the services provided by this Agreement.

6.3 INSURANCE. The ENGINEER shall be responsible for and maintain Worker's Compensation Insurance to cover said ENGINEER'S employees, as may be required by the laws of South Dakota.

ENGINEER shall endeavor to procure and maintain professional liability insurance for protection from claims arising out of performance of professional services, including those performed by ENGINEER's consultants, caused by a negligent error, omission or act for which the insured is legally liable with limits of \$1,000,000 per occurrence and aggregate. Cost to be borne by ENGINEER.

In addition, the ENGINEER will carry Commercial General Liability Insurance and will, upon request, furnish insurance certificates to the OWNER. ENGINEER agrees to indemnify OWNER for the claims covered by ENGINEER'S Commercial General Liability Insurance subject to the limitations contained in the policy. ENGINEER agrees to purchase additional insurance if requested by the OWNER (presuming such insurance is reasonably available from carriers acceptable to the ENGINEER), provided the costs for the additional insurance are reimbursed by the OWNER.

6.4 MEDIATION. DELETED.

6.5 PROPRIETARY INFORMATION. The technical and pricing information contained in the Agreement is to be considered Confidential and Proprietary, and is not to be disclosed or otherwise made available to third parties without the express written consent of the ENGINEER.

6.6 EXTENT OF AGREEMENT. This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER covering the services set forth herein and supersedes any prior negotiations, representations or agreements therefore, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER.

6.7 APPLICABLE LAW. This Agreement shall be governed by the laws of the State of South Dakota.

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

Attest:

CITY OF RAPID CITY
Rapid City, South Dakota

Finance Officer

Mayor

Attest:

ALLIANCE OF ARCHITECTS AND ENGINEERS
Rapid City, South Dakota

Secretary/Treasure


President