

PW080106-16

CONSULTING AGREEMENT

By and Between

CITY OF RAPID CITY
300 Sixth Street
Rapid City, SD, 57701-2724

And

WENCK ASSOCIATES, INC.
1800 Pioneer Creek Center
P.O. Box 249
Maple Plain, Minnesota 55359-0249

This Agreement entered into this ____ day of, 20__ by and between **CITY OF RAPID CITY** (hereinafter the **Client**) and **WENCK ASSOCIATES, INC.** (hereinafter the **Consultant**) to provide certain professional engineering services as set forth below.

I. Work to be Performed

The **Consultant** shall furnish professional engineering services as directed by the **Client**. The **Consultant** will provide experienced staff to perform the services in a competent and professional manner. The services will include the work described in Exhibit I. At the **Client's** request the **Consultant** shall furnish periodic cost estimates to the **Client** for services to be performed.

II. Compensation

In full consideration for services under this Agreement, the **Consultant** shall be compensated for services on a per task basis, not to exceed \$25,000..

Additional work approved by the **Client**, outside of the scope of services described in Exhibit I, will be billed at hourly rates as shown in Exhibit II.

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The **Consultant** shall bill **Client** on a monthly basis and shall provide any reports, invoices and records, which may reasonably be required. All invoices shall be submitted to the **Client's** representative for payment. **Client** shall make payment on the basis of properly itemized and documented invoices within 30 days after receipt of the invoice.

III. Independent Contractor

In rendering services hereunder, the **Consultant** shall be an Independent Contractor and no employer/employee relationship shall arise out of or result from rendering such services.

IV. Personnel

The **Consultant** represents that it has, or will secure at its own expense, all personnel required in performing the Services under this Agreement. It is agreed that other consultants and contractors that may be required to fully carry out the work will be retained directly by the **Client**.

All of the Services required hereunder will be performed by The **Consultant** and all personnel engaged in the work shall be fully qualified and shall be authorized and permitted under South Dakota and local laws to perform such Services.

V. Responsibilities

The **Consultant** shall be and remain liable in accordance with applicable law for damages to the **Client** caused by The **Consultant's** negligent performance of Services furnished under this Agreement except for errors, omissions, or other deficiencies to the extent attributable to **Client**, or any third party. The **Consultant** shall not be responsible for any time delays in the project caused by circumstances beyond the **Consultant's** control. **Client** shall be responsible for all permits, approvals, and licenses required.

VI. Changes

The **Client** may, at any time by written order, make changes within the general scope of this Agreement in the Services to be performed. If such changes cause an increase or decrease in cost of, or time required for, performance of any Services under this Agreement, whether or not changed by any order, an equitable adjustment shall be made and this Agreement shall be

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modified in writing accordingly. The notification of change must assert any claim of the Consultant for adjustment under this clause in writing within thirty (30) days from the date of receipt unless the **Client** grants a further period of time before the date of final payment under this Agreement.

VII. Assignability

The **Consultant** shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without prior written consent of the **Client** hereto.

VIII. Confidentiality

Any reports, information, data, drawings, specifications, estimates and summaries given to or prepared or assembled by the **Consultant** under this Agreement shall not be made available to any individual or organization by the **Consultant** to the extent allowed by law without prior written consent of the **Client** hereto. All reports and other communications from the **Consultant** concerning the work to be performed shall be directed to the **Client**.

IX. Insurance

The **Consultant** specifically obligates themselves to the **Client** in the following respects, to wit:

The **Consultant** shall defend, indemnify and hold harmless the **Client**, their officers, agents and employees, from suits, actions, proceedings, claims or liability including, but not limited to, death or personal injury of persons, property damage, and expenses including reasonable attorney's fees, costs and other fees, incidental to the defense of such suits, actions, proceedings or claims, based upon or alleged to be based upon, the error, omission, or negligent act by the **Consultant**, its officers, agents or employees and arising out of, occurring in connection with, resulting from, or caused by the performance, or failure of performance, or the work or Services under this Agreement.

Client will indemnify, defend and hold the **Consultant** harmless from any and all loss, damages, costs, penalties, claims, liabilities, and expenses including reasonable investigation

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and legal expenses arising out of any claim or loss or damage of any nature whatsoever from or in any way related to **Consultant** services to **Client** under this Agreement based upon or alleged to be based upon the error, omission, or negligent act of **Client**, its officers, agents or employees, excepting any acts or omissions arising out of the negligent performance of any services provided by the **Consultant**, its officers, agents, or employees.

The **Consultant** further specifically agrees that it is an independent Contractor and an employing unit subject as an employer, to applicable Unemployment Compensation Statutes, so as to relieve the **Client** of responsibility of liability for treating the **Consultant's** employees as employees of the **Client** for the purpose of keeping records, making reports and payment of Unemployment Compensation taxes or contributions; and the **Consultant** agrees to indemnify and hold the **Client** harmless and reimburse them for expense or liability incurred under said Statutes in connection with employees of the **Consultant**, including a sum equal to benefits paid to those who were the **Consultant's** employees, where such benefit payments are charged to the **Client** under any Merit Plan or its individual Reserve Account pursuant to any State Unemployment Compensation Statute.

The **Consultant** shall also provide and maintain in full force and effect during the time of this Agreement, insurance covering the operation of automobiles, trucks and other vehicles of the company satisfactory to the **Client**, protecting the **Consultant** and the **Client** against liability from damages because of injuries, including death, suffered by a person or persons other than employees of the **Consultant**, and liability or damages to property, arising from or growing out of the **Consultant's** operations in connection with the performance of this Agreement.

Automobile Liability Insurance shall be in the sum of not less than \$1,000,000 for Combined Single Limit for Bodily Injury and Property Damage. General Liability Insurance shall be in the sum of not less than \$1,000,000 Combined Single Limit for Bodily Injury and Property damage.

Such insurance policies shall have the City of Rapid City as an additional insured with respect to all activities arising out of the performance of the services under this agreement.

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A signed Certificate of Insurance satisfactory to the Client of compliance with the requirements of this section shall be furnished to the Client under this Agreement. Such Certificate of Insurance shall provide for ten (10) days written notice to the Client prior to the cancellation or modification of any insurance referred to therein. The Client failure to obtain from the Consultant a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements.

X. Representatives

Mr. Rodney Ambrosie will be the representative for the Consultant for the purpose of this Agreement. Mr. Jerry Wright will be the Client's representative for the purposes of this Agreement.

XI. Termination

This Agreement shall be effective from _____, 20__ and shall terminate upon completion of the Consultant work hereunder unless sooner terminated by either party by giving sixty days notice of termination in writing to the other party.

IN WITNESS WHEREOF, the Client and Consultant have executed this Agreement as of _____, 20__.

Approved as to form and execution this __th day of ____ 20__.

CITY OF RAPID CITY

WENCK ASSOCIATES, INC.

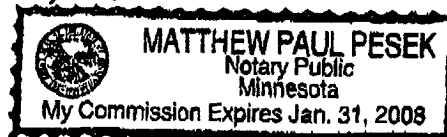
Mayor

Attest;

City Finance Officer

[Handwritten Signature]

[Handwritten Signature]
July 25th 2006



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Scope of Services

EXHIBIT I

A summary of our tasks is as follows:

- Task 1.1** Provide CADD services to update facility maps, including structures, utilities, monitoring devices, roads, storage areas, borrow areas, fences, storm water infrastructures, and other items.
The majority of this information has already been included on an aerial map recently done by Horizon. Wenck will detail and label the aerial map as necessary.
A grading plan for the site will also be developed for future development. This will include a capacity analysis providing information such as borrow, total airspace, and cell life. Wenck will work with previous developed plans and will provide recommendations based on our experience.
- Task 1.1 Estimated Fee \$12,500.**
- Task 1.2** Wenck will review and update existing closure and post-closure plans and cost estimates. Wenck will compare cost estimates to other sites we have worked on and provide recommendations to Rapid City as necessary.
- Task 1.2 Estimated Fee \$2,000**
- Task 1.3** Wenck will update the financial plans from historical plans prepared in 1990, 1997, and 2001.
- Task 1.3 Estimated Fee \$1,500**
- Task 1.4:** Wenck will assist in the incorporation of findings and recommendations from prior studies such as groundwater monitoring, landfill gas generation, leachate removal and handling, and storm water/surface water management.
- Task 1.4 Estimated Fee \$2,500**
- Task 1.5** Wenck will work closely with Jerry to update the Solid Waste Operation Plan in accordance with good management practices and SDD ENR Solid Waste Regulations.
- Task 1.5 Estimated Fee \$2,000**
- Task 1.6** Wenck will review the final application for completeness and accuracy. The final application will be signed and sealed by Rapid City.
- Task 1.6 Estimated Fee \$1,500**
- Task 1.7** Wenck will assist Mr. Wright will miscellaneous projects on a as needed and negotiated basis.
- Task 1.7 Estimated Fee \$3,000**
- TOTAL PROJECT \$25,000**

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Estimated Fees

EXHIBIT II

WENCK ASSOCIATES, INC PROFESSIONAL ENGINEERING FEE SCHEDULE JANUARY 2006

	<u>Hourly Rate</u>
General Office	\$51.00
Clerical	\$57.00
Technician/Word Processor	\$63.00
Field Technician/Sr. Word Processor	\$72.00
Junior Engineer/Junior Scientist	\$79.00
Assistant Engineer/Assistant Scientist	\$86.00
Engineer/Scientist	\$96.00
Engineer II/Scientist II	\$104.00
Engineer II/Scientist III/Designer	\$113.00
Senior Engineer/Senior Scientist	\$123.00
Project Engineer/Project Professional	\$133.00
Supervising Engineer/Supervising Professional	\$142.00

- *Subcontracted services will be billed at cost plus 15 percent.*
- *Mileage will be billed at the IRS approved rate.*
- *Reproductions will be billed at the rate of \$0.15 per copy.*
- *Auto CAD/Intergraph/GIS/Modeling will be billed at a rate of \$10.00/hour.*
- *Invoices are due upon presentation. Invoice balances not paid within thirty (30) days of invoice date are subject to 1-1/2% (18% annual) interest or finance charge.*
- *Rates to be adjusted annually.*