

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

**Date:**

**Project Name & Number:** Source Water Protection Project  
SSW06-1630

**CIP #:**

**Project Description:** Develop Funding Brochure for the Source Water Protection Project to be used to request funding from the federal government for drinking water protection initiatives.

**Consultant:** Stanley Consultants, Inc.

**Original Contract Amount:** \$9,850.00      **Original Contract Date:** November 8, 2006      **Original Completion Date:** February 1, 2006

**Amendment Number:**



**Amendment Description:**

**Current Contract Amount:** \_\_\_\_\_      **Current Completion Date:** \_\_\_\_\_  
**Change Requested:** \_\_\_\_\_  
**New Contract Amount:** \_\_\_\_\_ \$0.00      **New Completion Date:** \_\_\_\_\_

**Funding Source This Request:**

Amount	Dept.	Line Item	Comments
\$4,925.00	<del>810</del>	4223	
\$4,925.00	<del>830</del>	4223	
	0133		
\$9,850.00	<b>Total</b>		

### Agreement Review & Approvals

 _____ Project Manager	11/8/06 _____ Date	_____ Division Manager	_____ Date
 _____ Department Director	11/8/06 _____ Date	_____ City Attorney	_____ Date

**ROUTING INSTRUCTIONS**

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

**FINANCE OFFICE USE ONLY**

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

Date	Initials	Approved
11/06/06	er	Y N
Cash Flow		Y N



## PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of November \_\_\_\_, 2006, between CITY OF RAPID CITY (CLIENT) and STANLEY CONSULTANTS, INC. (CONSULTANT). CLIENT intends to Develop a Funding Brochure for Source Water Protection Project (hereinafter called "project").

CLIENT and CONSULTANT agree:

1. **Scope of Services.** CONSULTANT shall perform professional services as stated in Exhibit 1.
2. **Compensation.** CLIENT shall compensate CONSULTANT for CONSULTANT's services as stated in Exhibit 2.
3. **Terms and Conditions.** CONSULTANT shall provide professional services in accordance with the terms and conditions stated in Exhibit 3. If client issues a purchase order or other document to initiate the commencement of services hereunder, it is agreed that any terms and conditions appearing thereon shall have no application and only the provisions of this Agreement shall automatically apply.
4. **Special Provisions.** Special provisions to this Agreement, if any, are stated in Exhibit 4.
5. CLIENT has provided or shall provide for payment from one or more lawful sources of all sums to be paid to CONSULTANT.
6. Following exhibits are attached to and made part of this Agreement:

Exhibit 1 - Scope of Services  
Exhibit 2 - Compensation  
Exhibit 3 - Standard Terms and Conditions  
Exhibit 4 - Special Provisions

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

STANLEY CONSULTANTS, INC.

CITY OF RAPID CITY

By: *Bennett Reischauer*  
Bennett Reischauer  
Senior Vice President

By: \_\_\_\_\_  
Jim Shaw, Mayor

Attest: *Michelle Hogn*

Attest: \_\_\_\_\_  
James F. Preston, Finance Officer

Address for giving notices:

STANLEY CONSULTANTS  
5775 WAYZATA BOULEVARD  
SUITE 955  
MINNEAPOLIS, MN 55416-1235

Address for giving notices:

CITY OF RAPID CITY, SD  
300 SIXTH STREET  
RAPID CITY, SD 57701

If CLIENT is a public body, attach evidence of authority to sign and resolution or other document authorizing execution of AGREEMENT.

## EXHIBIT 1

**SCOPE OF SERVICES  
SOURCE WATER PROTECTION PROJECT FUNDING BROCHURE  
RAPID CITY, SOUTH DAKOTA**

In order to develop a Funding Brochure that grasps the importance of this project and reflects the interests of the key stakeholders, Consultant proposes the following scope of services:

1. Meet with the Client to discuss the background of the project and expectations.
2. Meet with Client personnel to review project files and collect background information.
3. Visit site to observe project features. Document observations with photographs.
4. Develop preliminary project concepts and list of recommended project tasks based on Client input, review of project documents and site observations.
5. Develop a budget estimate for engineering studies and design for the recommended tasks.
6. Develop budget estimate for construction based on preliminary project concepts.
7. Prepare a draft Funding Brochure. The brochure will include the following:
  - a. Description of the Funding Request
  - b. Project background
  - c. Color photographs of project features
  - d. Description of need for recommended improvements
  - e. Objective of improvement project
  - f. Scope of project
  - g. Estimated project design and construction cost/schedule
  - h. Contact Information for Client and stakeholders
  - i. Letters of support from Client, stakeholders and residents
8. Following client review, a final Funding Brochure will be prepared incorporating reviewing comments and recommendations.

**EXHIBIT 2**

**COMPENSATION  
SOURCE WATER PROTECTION PROJECT FUNDING BROCHURE  
RAPID CITY, SOUTH DAKOTA**

Consultant proposes to perform the above-described work for a “lump sum” fee of \$9,850. Additional services may be provided by amending this contract, with the approval of Consultant and Client.

## EXHIBIT 3



## Standard Terms and Conditions

**1. CLIENT'S RESPONSIBILITIES**

- 1.1 Name CLIENT's representative with authority to receive information and transmit instructions for CLIENT.
- 1.2 Provide CLIENT's requirements for project, including objectives and constraints, design and construction standards, bonding and insurance requirements, and contract forms.
- 1.3 Provide available information pertinent to project upon which CONSULTANT may rely.
- 1.4 Arrange for access by CONSULTANT upon public and private property, as required.
- 1.5 Examine documents presented by CONSULTANT, obtain legal and other advice as CLIENT deems appropriate, and render written decisions within reasonable time.
- 1.6 Obtain consents, approvals, licenses, and permits necessary for project.
- 1.7 Advertise for and open bids when scheduled.
- 1.8 Provide services necessary for project but not within scope of CONSULTANT's services.
- 1.9 Indemnify CONSULTANT, its employees, agents, and consultants against claims arising out of CONSULTANT's design, if there has been a deviation from the design beyond the CONSULTANT's control or failure to follow CONSULTANT's recommendation and such deviation or failure caused the claims.
- 1.10 Promptly notify CONSULTANT when CLIENT learns of contractor error or any development that affects scope or timing of CONSULTANT's services.

**2. PERIOD OF SERVICE**

- 2.1 CONSULTANT is not responsible for delays due to factors beyond its control.
- 2.2 If CLIENT requests changes in project, compensation for and time of performance of CONSULTANT's services shall be adjusted appropriately.

**3. CONSTRUCTION COST AND COST ESTIMATES**

- 3.1 **Construction Cost.** Construction cost means total cost of entire project to CLIENT, except for CONSULTANT's compensation and expenses, cost of land, rights-of-way, legal and accounting services, insurance, financing charges, and other costs which are CLIENT's responsibility as provided in this Agreement.
- 3.2 **Cost Estimates.** Since CONSULTANT has no control over cost of labor, materials, equipment or services furnished by others, over contractors' methods of determining prices, or over competitive bidding or market

conditions, its estimates of project construction cost will be made on the basis of its employees' experience and qualifications and will represent their best judgment as experienced and qualified professionals, familiar with the construction industry. CONSULTANT does not guarantee that proposals, bids, or actual construction cost will not vary from its estimates of project cost.

**4. GENERAL****4.1 Termination.**

4.1.1 Either party may terminate their obligation to provide further services upon twenty (20) days' written notice, after substantial default by other party through no fault of terminating party.

4.1.2 CLIENT may terminate CONSULTANT's obligation to provide further services upon twenty (20) days' written notice if project is abandoned. In such event, progress payments due CONSULTANT for services rendered, plus unpaid reimbursable expenses and termination charge, shall constitute total compensation due.

**4.2 Reuse of Documents.**

4.2.1 All tangible items prepared by CONSULTANT are instruments of service, and CONSULTANT retains all copyrights. CLIENT may retain copies for reference, but reuse on another project without CONSULTANT's written consent is prohibited. CLIENT will indemnify CONSULTANT, its employees, agents, and consultants against claims resulting from such prohibited reuse. Said items are not intended to be suitable for completion of this project by others.

4.2.2 Submittal or distribution of items in connection with project is not publication in derogation of CONSULTANT's rights.

**4.3 Payment.**

4.3.1 CONSULTANT shall submit a monthly statement for services rendered and reimbursable expenses incurred. CLIENT shall make prompt monthly payments.

4.3.2 If CLIENT fails to make payment within thirty (30) days after receipt of statement, interest at maximum legal rate or at a rate of 18%, whichever is less, shall accrue; and, in addition, CONSULTANT may, after giving seven (7) days' written notice, suspend services until it has been paid in full all amounts due it.

4.3.3 CLIENT has provided or shall provide for payment from one or more lawful sources of all sums to be paid to CONSULTANT.

4.3.4 CONSULTANT's compensation shall not be reduced on account of any amounts withheld from payments to contractors.

**4.4 Controlling Law.** Agreement shall be governed by Minnesota law.

**4.5 Successors and Assigns.**

4.5.1 The parties bind themselves, their successors, and legal representatives to the other party and to successors and legal representatives of such other party, in respect to all covenants and obligations of this Agreement.

4.5.2 Neither party shall assign, sublet, or transfer any interest in this Agreement without written consent of the other, provided CONSULTANT may employ such independent consultants, associates, and subcontractors as it may deem appropriate.

4.5.3 Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the parties.

**4.6 CONSULTANT's Accounting Records.** Records of CONSULTANT's personnel time, reimbursable expenses, and accounts between parties shall be kept on a generally-recognized accounting basis.

**4.7 Separate Provisions.** If any provisions of this Agreement shall be held to be invalid or unenforceable, remaining provisions shall be valid and binding.

**4.8 Waiver.** No waiver shall constitute a waiver of any subsequent breach.

**4.9 Warranty.**

4.9.1 CONSULTANT shall use reasonable care to reflect requirements of all applicable laws, rules, or regulations of which CONSULTANT has knowledge or about which CLIENT specifically advises in writing, which are in effect on date of Agreement. CONSULTANT INTENDS TO RENDER SERVICES IN ACCORDANCE WITH GENERALLY ACCEPTED PROFESSIONAL STANDARDS, BUT NO OTHER WARRANTY IS EXTENDED, EITHER EXPRESS OR IMPLIED, IN CONNECTION WITH SUCH SERVICES. CLIENT's rights and remedies in this Agreement are exclusive.

4.9.2 CONSULTANT shall not be responsible for contractors' construction means, methods, techniques, sequences, or procedures, or for contractors' safety precautions and programs, or for contractors' failure to perform according to contract documents.

4.9.3 The CONSULTANT believes that any computer software provided under this Agreement is suitable for the intended purpose, however, it does not warrant the suitability, merchantability, or fitness for a particular purpose of this software.

**4.10 Period of Repose.** Any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued not later than completion of services to be performed by CONSULTANT.

**4.11 Indemnification.** To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CLIENT, CLIENT's officers, directors, partners, employees, and agents from and against any and all

claims for bodily injury and for damage to tangible property caused solely by the negligent acts or omissions of CONSULTANT or CONSULTANT's officers, directors, partners, employees, agents, and CONSULTANT's consultants in the performance and furnishing of CONSULTANT's services under this Agreement. Any indemnification shall be limited to the terms and amounts of coverage of the CONSULTANT's insurance policies and Section 4.12, Limitation of Liability.

To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONSULTANT, CONSULTANT's officers, directors, partners, employees, and agents and CONSULTANT's consultants from and against any and all claims for bodily injury and for damage to tangible property caused solely by the negligent acts or omissions of CLIENT or CLIENT's officers, directors, partners, employees, agents, and CLIENT's consultants with respect to this Agreement on the Project. In addition to the indemnity provided under this section, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless CONSULTANT and its officers, directors, partners, employees, and agents and CONSULTANT's consultants from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of, or relating to the presence, discharge, release, or escape of asbestos, PCBs, petroleum, hazardous waste, or radioactive material at, on, under, or from the Project site.

**4.12 Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE CONSULTANT AND CONSULTANT'S CONSULTANTS, TO CLIENT AND ANYONE CLAIMING BY, THROUGH OR UNDER CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS, OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO THE PROJECT OF THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, OR WARRANTIES EXPRESSED OR IMPLIED, OF CONSULTANT OR CONSULTANT'S CONSULTANTS, SHALL NOT EXCEED \$100,000 OR THE TOTAL COMPENSATION RECEIVED BY CONSULTANT, WHICHEVER IS GREATER. THIS LIMITATION INCLUDES LIABILITY UNDER SECTION 4.11.

**4.13 Extent of Agreement.** This Agreement represents the entire agreement between the parties and may be amended only by written instrument signed by both parties.

**4.14 Subrogation Waiver.** The parties waive all rights against each other, and against contractors, consultants, agents, and employees of the other for damages covered by any property insurance during construction, and each shall require similar waivers from their contractors, consultants, and agents.

**EXHIBIT 4**  
**SPECIAL PROVISIONS**

The following language supersedes and replaces Section 4.4 in the Standard Terms and Conditions:

4.4 Controlling Law. Agreement shall be governed by the laws of the state of South Dakota. In the event of any conflict of law, the law of the state of South Dakota shall be controlling. Any legal action arising out of or relating to this Agreement shall be brought only in the Circuit Court of the state of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

4.11 The third paragraph of this section is deleted in its entirety.

The following new section is added:

4.14 CONSULTANT shall maintain all applicable insurance coverage for workers' compensation, general liability, professional liability, and automobile liability. CONSULTANT shall at all times during the term of this Agreement maintain its general liability insurance with a minimum of \$1,000,000 limit per occurrence or equivalent. CONSULTANT shall furnish CLIENT with a certificate of insurance acceptable to CLIENT. Such certificate shall be attached hereto and incorporated herein along with a sheet generally describing the coverage herein contained. Said insurance shall name the City of Rapid City as an additional insured.