

AGREEMENT FOR PROFESSIONAL SERVICES

HILLCREST RECONNAISSANCE SURVEY, COMPREHENSIVE PRESERVATION PLAN UPDATE, AND HISTORIC PRESERVATION COMMISSION TRAINING FOR HISTORIC PRESERVATION COMMISSION

THIS IS AN AGREEMENT made on this _____ day of March 2009, between the City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as OWNER, and Michelle L. Dennis, M.L. Dennis Consulting, hereinafter referred to as CONSULTANT. This agreement will provide an historic reconnaissance survey of the Hillcrest area in Rapid City, an update of the Comprehensive Preservation Plan, and goals training for the Historic Preservation Commission of Rapid City, South Dakota.

OWNER and CONSULTANT in consideration of their mutual covenants herein agree in respect to the performance of professional consulting services by CONSULTANT and the payment for those services by OWNER as set forth below.

SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1 General

CONSULTANT shall provide to OWNER professional consulting services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional consulting representative for the Project and furnishing professional survey, preservation planning, and training services.

1.2 Scope of Work

The Basic Services Scope of Work is described in Exhibit A and shall include the historic survey of the Hillcrest area, an update of the Comprehensive Preservation Plan and goals training for the Historic Preservation Commission.

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

2.1 Services Requiring Authorization in Advance

If authorized in writing by OWNER, CONSULTANT shall furnish Additional Services of the types listed in paragraphs 2.1.1 through 2.1.3, inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in Exhibit A; these will be paid for by OWNER as indicated in Section 5.

- 2.1.1 Services resulting from significant changes in the general scope, extent or character of the Project including, but not limited to, changes in size, complexity, or method of financing; and revising previously accepted studies, reports or design documents when such revisions are required by changes in laws, rules, regulations, ordinances,

codes or orders enacted subsequent to the preparation of such studies, reports or documents.

- 2.1.2 Preparing to serve or serving as consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services).
- 2.1.3 Additional services in connection with the Project, excluding services, which are to be furnished by OWNER in accordance with Section 3, and services not otherwise provided for in this Agreement.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of CONSULTANT:

- 3.1 Ms. Karen Bulman, Planner with the Rapid City Growth Management Department, shall act as OWNER's representative with respect to the services to be rendered under this Agreement. Ms. Bulman shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONSULTANT's services for the Project.
- 3.2 Assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the Project.
- 3.3 Examine all studies, reports, sketches, drawings, proposals and other documents presented by CONSULTANT, obtain advice of an attorney, insurance counselor and other consultants as 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 CONSULTANT.
- 3.4 Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services.
- 3.5 Direct CONSULTANT to provide negotiated Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICE

- 4.1 The CONSULTANT'S period of service shall complete the scope of work stated in Exhibit A by May 31, 2009, provided a written "Notice to Proceed" is issued by March 17, 2009. The Hillcrest Reconnaissance Survey Project shall be submitted for review by May 6, 2009. The Comprehensive Plan update shall be submitted for review by April 30, 2009. The Goals Training shall be completed by May 6, 2009. The CONSULTANT'S services shall be provided in general accordance with the schedule as defined in EXHIBIT B.

SECTION 5 - PAYMENTS TO CONSULTANT

5.1 Methods of Payment for Services and Expenses of CONSULTANT

5.1.1 *For Basic Services.* OWNER shall pay CONSULTANT for Basic Services rendered under Section 1 (Scope of Work in Exhibit A) an amount not-to-exceed \$9,750.00.

5.1.1.1 *Fixed Fee.* A fixed fee of \$ 9,750.00 shall be paid upon completion of the approved final report.

5.2 Times of Payments

5.2.1 CONSULTANT shall submit the final statement for Basic Services rendered.

5.3 Other Provisions Concerning Payments

5.3.1 In the event of termination by OWNER upon completion of any phase of Basic Services, progress payments due CONSULTANT for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, CONSULTANT also will be reimbursed for the charges of independent professional associates and consultants employed by CONSULTANT to render Basic Services incurred through such phase. In the event of any such termination, CONSULTANT will be paid for unpaid Reimbursable Expenses previously incurred.

5.3.2 The employees of CONSULTANT, professional associates and consultants, whose time is directly assignable to the program shall keep and sign a time record showing the element of the Project, date and hours worked, title of position and compensation rate.

5.3.3 *Records.* The CONSULTANT shall maintain an accurate cost keeping system as to all costs incurred for this Agreement and shall produce for examination books of accounts, bills, invoices and other vouchers or certified copies thereunder if originals be lost. CONSULTANT shall produce these records at such reasonable time and place as may be designated by the OWNER and shall permit extracts and copies thereof to be made during the contract period and for three years after the date of final payment to CONSULTANT.

CONSULTANT shall maintain time records and payroll records of the principal and all personnel for time spent performing work on the project described in this Agreement for a period of three years from the conclusion of the project.

Upon reasonable notice, the CONSULTANT will allow OWNER'S auditors to audit all records of the CONSULTANT related to this Agreement. These records shall be clearly identified and readily accessible. All records shall be kept for a period of three (3) years after final payment under Agreement is made and all other pending matters are closed.

5.3.4 *Inspection of Work.* OWNER auditors shall at reasonable times be accorded proper CONSULTANT facilities for review and inspection of the work in this Agreement. OWNER shall have access to CONSULTANT's premises and to all books, records, correspondence, instructions, receipts, vouchers and memoranda of every description pertaining to this Agreement.

5.3.5 *Audits.* The CONSULTANT shall, with reasonable notice, afford representatives of the OWNER reasonable facilities for examination and audits of the cost account records; shall make such returns and reports to a representative as he may require; shall produce and exhibit such books, accounts, documents and property as he may determine necessary to inspect and shall, in all things, aid him in the performance of his duties.

5.3.6 Payment shall be made subject to audit by duly authorized representatives of the OWNER.

5.4 Ownership of Data

Documents and all products of this Agreement are to be the property of the OWNER.

5.5 Publication and Release of Information

The CONSULTANT shall not copyright material developed under this Agreement without written authorization from the OWNER. The OWNER reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.

5.6 Acquisition of Property or Equipment

The acquisition of property or equipment will be in accordance with 49 CFR 18.32.

5.7 Personnel Employment

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the OWNER shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fees, commission, percentage, brokerage fee, gift or contingent fee.

5.8 Nondiscrimination/ADA

The CONSULTANT agrees to comply with the requirements of Title 49, CFR Part 21 and Title VI of the Civil Rights Act of 1964. The CONSULTANT agrees to submit upon request quarterly Title VI (Civil Rights) State of Contractor reports to the State. The CONSULTANT agrees to provide services in compliance with the Americans with Disabilities Act of 1990.

5.9 Claims

To the extent authorized by law, the CONSULTANT shall defend, indemnify and hold harmless the OWNER, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses and attorney fees, to the extent such claims are caused by any negligent performance of professional services by the CONSULTANT, its employees, agents, subcontractors or assignees.

It is further agreed that any and all employees of either party, while engaged in the performance of any work or services, shall not be considered employees of the other party, and that any and all claims that may or might arise under the Worker's Compensation Act of the State of South Dakota on behalf of said employees, while so engaged on any of the work or services provided to be rendered herein, shall in no way be the obligation or responsibility of the other party.

5.10 Acceptance and Modification

This Agreement together with the Exhibits and schedules identified above constitute the entire agreement between OWNER and CONSULTANT and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled after consultation with, and approval in writing by, the parties to this Agreement.

5.11 Termination or Abandonment

The CONSULTANT and the OWNER share the right to terminate this Agreement upon giving thirty (30) days written notice of such cancellation to the other party. If this Agreement is terminated under this paragraph, CONSULTANT shall deliver to OWNER all work product produced up to the time of termination. OWNER shall reimburse CONSULTANT for all work completed to the date of termination.

SECTION 6- GOVERNING LAW

This agreement and any dispute arising out of this agreement shall be governed by the laws of the State of South Dakota.

6.1 Forum Selection

Any dispute arising out of this contract shall be litigated in the Seventh Circuit Judicial Court for the State of South Dakota, Rapid City, South Dakota.

SECTION 7 - MERGER CLAUSE

This written agreement including Exhibit A - "Scope of Work" – Hillcrest Reconnaissance Survey, Comprehensive Preservation Plan Update, and Historic Preservation Commission Training Project, Exhibit B - "Project Schedule," Exhibit C – "Manhour Estimate", and Exhibit D – "Proposal for Hillcrest Reconnaissance Survey, Comprehensive Preservation Plan Update and Historic Preservation Commission Training" and "Request for Proposals for Reconnaissance Survey, Comprehensive Preservation Plan, Goals Training Project" constitutes the entire agreement of the parties. No other promises or consideration are a part of this agreement.

SECTION 8 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

CONSULTANT certifies, by signing this agreement, that neither it nor its Principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement by their duly authorized officers on the day, month and year first written above.

OWNER:

BY: _____

Mayor
City of Rapid City
300 Sixth Street
Rapid City, South Dakota 57701

ATTEST:

Finance Officer

CONSULTANT:

BY: _____

Michelle L. Dennis/M.L. Dennis
Consulting
513 Meade Street
Rapid City, South Dakota 57701

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this _____ day of March 2009, before me, a Notary Public, personally appeared Alan Hanks, known to me to be the Mayor of Rapid City, and acknowledge to me that he did sign the foregoing document as such officer and for the purposes therein stated.

Notary Public

My Commission Expires:

(SEAL)

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this ____ day of March 2009, before me, a Notary Public, personally appeared Jim Preston, known to me to be the Finance Officer for Rapid City, and acknowledge to me that he did sign the foregoing document as such officer and for the purposes therein stated.

Notary Public

My Commission Expires:

(SEAL)

STATE OF SOUTH DAKOTA

COUNTY OF PENNINGTON

On this ____ day of March 2009, before me, a Notary Public, personally appeared, Michelle L. Dennis known to me to be a Principal of M.L. Dennis Consulting, and acknowledge to me that she did sign the foregoing document as such officer and for the purposes therein stated.

Notary Public

My Commission Expires:

(SEAL)

Address for Giving Notices:

Address for Giving Notices:

City of Rapid City

Growth Management Department
300 Sixth Street
Rapid City, South Dakota 57701

Michelle L. Dennis

M.L. Dennis Consulting
513 Meade Street
Rapid City, S.D. 57701

Exhibit A:

Scope of Work:

Task A: CONSULTANT will complete a Reconnaissance Survey of the Hillcrest Subdivision area, update the Comprehensive Preservation Plan, and provide training for the Historic Preservation Commission. Documentation will include a survey report that follows the stipulations set out in the "Interior's Guidelines for a Comprehensive Survey and the South Dakota Historic Resource Survey Manual" and include submission of the survey forms to the South Dakota Historic Preservation Office. The final report submitted to the Growth Management Office will include three copies of the reconnaissance survey reports. Included in the reports will be a determination of eligibility for the National Register.

Task B: CONSULTANT will update the Comprehensive Preservation Plan and submit three copies of the final revised Comprehensive Preservation Plan, including the document in an electronic format on a CD.

Task C: CONSULTANT will provide Historic Preservation Commission Training to include a review of the Commission's function and role in local preservation, its operation, its membership, and its relation to others as well as training to implement the plan and achieve the goals and objectives of the plan.

Exhibit B:

Project Schedule:

Notice to Proceed - March 3, 2009

Submittal of Draft Reports – May 6, 2009

Final Report – May 31, 2009

Exhibit C:

Manhour Estimate:

Task 1 – 90 hours

Task 2 – 80 hours

Task 3 – 25 hours

Exhibit D:

Proposal for Hillcrest Reconnaissance Survey, Comprehensive Preservation Plan Update and
Historic Preservation Commission Training (attached)

Request for Proposal (attached)