

AGREEMENT BETWEEN CITY OF RAPID CITY AND BROSZ ENGINEERING, INC
FOR
PROFESSIONAL ENGINEERING SERVICES

This contract dated _____, 2005 between the City of Rapid City, and Brosz Engineering, Inc., in consideration of their mutual covenants herein agree in respect of the performance of professional Engineering services by Brosz Engineering and the payment for those services by The City of Rapid City as set forth below and in the Attachments.

Brosz Engineering, Inc. (herein referred to as the ENGINEER) will provide the City of Rapid City (herein referred to as the CITY) with engineering services for the design, bid letting and construction engineering services on the reconstruction of Lombardy Drive project.

These services will include serving as CITY's professional Engineering representative for the Project, providing professional Engineering consultation and advice and furnishing customary civil and structural Engineering services. The project will consist of demolition and removal of approximately 2,550 ft of existing pavement, including curb and gutter where it exists, and installation of approximately 200 ft of new water main and fittings, new curb and gutter and new Portland cement concrete or asphalt cement concrete pavement.

I. PROJECT SCOPE OF SERVICES

A. Survey

The ENGINEER will provide a survey describing physical characteristics, legal limitations and utility locations for the site of the proposed project and provide any required written legal descriptions of the site. The survey and legal information will include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures, adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning deed restrictions, boundaries and contours of the site, locations, dimensions and necessary data pertaining to existing buildings and other improvements adjacent to but not affected by the proposed project.

All the information on the survey is to be referenced to a project benchmark.

The ENGINEER will also provide survey, as required, for hydraulic analysis of drainage ways.

B. Preliminary Design

The ENGINEER will provide the CITY with preliminary plans for review. These plans will establish proposed construction improvements including any necessary utility relocations,

will define any easements that may be necessary, provide materials recommendations for the project, establish quantities of materials needed, and provide a preliminary estimate on the cost of construction.

The ENGINEER will be available to conduct any conferences or meetings that may be needed to coordinate and complete the design of the project.

C. Utility Identification

The CITY will provide required information concerning utility services and lines, both public and private, above and below grade, including inverts and depths.

D. Permits

The ENGINEER will assist the CITY in securing the necessary permits and making the necessary filings required to obtain the approval of government authorities having jurisdiction over any proposed project.

E. Easement Identification

The ENGINEER will provide assistance on right-of-way issues, as necessary.

F. Final Plans and Specifications

Upon completion of the preliminary plans review by the CITY, the ENGINEER will make necessary revisions and alterations to the plans. The ENGINEER will provide those drawings, plan evaluations, outline specifications and other documents as necessary to fix and illustrate the size and character of the project. The ENGINEER will prepare a final ENGINEER's estimate based upon plans quantities and submit plans and estimates to the CITY for final approval.

The ENGINEER will supply the CITY with final plans and specifications documents that are suitable for advertisement for bids.

G. Bid Letting

The ENGINEER will prepare bid packages and information to bidders as required including a format for the bid form, bid bond form, form of the agreement for the construction contracts, performance and payment bond forms, and any general conditions requirements that will be part of the construction contract. The ENGINEER will prepare and facilitate the advertisement for bids, attend the opening of bids, prepare a written tabulation of the bid received and make any required recommendations for awarding of contracts.

H. Other Professional Services

If the professional expertise of a geotechnical engineer is required for this project, the CITY will secure these services from qualified geotechnical engineering company. The ENGINEER will incorporate the professional recommendations obtained from this company into the project plans as needed.

II. PROJECT GENERAL CONTRACT CONDITIONS

A. OWNERSHIP OF WORK PRODUCT

Upon final payment as herein provided, the reports, plans, specifications, Engineering calculations, technical data, all miscellaneous drawings, and all information contained therein, provided by ENGINEER in connection with its performance under this Agreement shall become the property of the CITY. The CITY hereby grants the ENGINEER the unrestricted right to retain copies of such materials and information, and to use these materials and information in the normal course of the ENGINEER's business for any lawful purpose.

It is agreed that neither party will be responsible for the other's use of these materials and information for purposes other than the Project, unless there is a written agreement between the parties specifying otherwise.

B. DISPUTES

Unless otherwise specifically provided in this Agreement, all claims, counter-claims, disputes or other matters in questions between the CITY and the ENGINEER arising out of, or relating to this Agreement, or the breach thereof, will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of South Dakota. Notice of a request for arbitration shall be sent in writing to the other party to this Agreement within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall a request for arbitration be made after the applicable statute of limitations for such claim under South Dakota Law has run. If the party receiving the notice of request does not agree to arbitration in writing within 10 calendar days, it will be deemed that the parties do not mutually agree to arbitrate the matter. A request to arbitrate shall not be deemed a condition precedent to the institution of legal proceedings. If the parties agree to arbitrate, the provisions of SDCL Chapter 21-25A shall apply.

C. TERMINATION

This Agreement may be terminated in whole or in part by either party in the event of substantial failure by either party to fulfill its obligations under this Agreement through no fault of the terminating party, provided, however, that no termination may be effected unless the other party is given 1) not less than ten (10) calendar days' written notice of intent to terminate, and 2) an opportunity for consultation with the terminating party prior to termination. The party receiving the notice will have ten (10) calendar days from receipt thereof to cure the alleged default.

If termination for default is effected by the CITY, and equitable adjustment in the compensation provided for in this Agreement shall be made, but 1) no amount shall be allowed for anticipated profit on unperformed services or other work, and 2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the CITY because of the ENGINEER's default; provided that nothing herein is intended to limit CITY's right to seek damages for any default.

If termination for default by the CITY is effected by the ENGINEER, or if the Project, or any part thereof is canceled as provided in "Cancellation of the Work Section" of this Agreement, the equitable adjustment shall include payment to the ENGINEER for services performed and expenses incurred up to the date of termination consistent with the payment provisions of "Payment to ENGINEER Section", in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the date of the termination notice.

Upon receipt of a termination notice, the ENGINEER shall promptly discontinue all effected work, unless the notice directs otherwise, and shall promptly deliver to the CITY all plans, specifications, drawings, estimates, data, reports, and such other information and materials accumulated by ENGINEER in performing services hereunder, whether complete or in process.

If, after termination by the CITY for default, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been a cancellation of the Project under "Cancellation of the Work Section" hereof, and an equitable adjustment of the compensation shall be made as provided in Subsection C of this Part.

D. CANCELLATION OF WORK

The CITY may, without being in default under this Agreement, cancel all or any portion of the services provided under this Agreement by giving twenty (20) days written notice to the ENGINEER. In the event of such cancellation the CITY shall pay to the ENGINEER all compensation earned up to the effective date of cancellation, and an equitable adjustment in compensation shall be made to provide the ENGINEER with reasonable compensation for the costs of winding down its services and canceling its performance of services under this Agreement, including those relating to commitments which had become firm prior to the date of the termination notice. Upon cancellation the ENGINEER shall turn over to the CITY all data, plans, specifications, drawings, and information gathered or developed for any uncompleted services covered by the Agreement.

E. MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the construed in accordance with the laws of the State of South Dakota.

This Agreement constitutes the entire agreement among the parties with reference to the services described herein, and shall not be amended or modified except in writing and signed by an authorized representative of each party. This Agreement supersedes all prior negotiations, representations or agreements, whether oral or written, relating to the services herein described.

This Agreement may not be assigned or transferred by any party hereto without the prior written consent of the other parties. This Agreement and the covenants herein contained, shall insure to the benefit of, and be binding upon the successors and assigns of the respective parties hereto.

Should any part, term or provision of this Agreement be determined by the Courts to be illegal, unenforceable, or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby, and an equitable adjustment to the Agreement with respect to the effected part, term or provision shall be made by the parties.

The ENGINEER shall perform the services described herein as an independent contractor, and not as an employee of the CITY. The ENGINEER will not use the CITY's equipment, supplies or facilities.

The ENGINEER shall be responsible for all taxes, assessments, permit fees or other charges pertaining to its performance of the services pursuant to this Agreement, including exclusive liability for all contributions, taxes or payments required to be made on account of the ENGINEER's employees under State and Federal laws relating to unemployment compensation, worker's compensation, income tax, social security, or other legislation requiring the payment of similar contributions or taxes.

The ENGINEER shall comply with all applicable Federal, State and local laws, regulations and ordinances with reference to the services performed hereunder.

Neither party shall be considered in default in the performance of it obligations hereunder to the extent that the performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party, and the time of performance of either party hereunder shall in such event be extended for a period equal to any time lost as a result thereof, and an equitable adjustment shall be made in the compensation by mutual consent.

The ENGINEER will maintain and provide necessary supporting documentation for audit purposes during the term hereof and for a period of one year after the completion of services hereunder. Accounting records shall be kept on the basis of generally accepted

accounting principles. Records shall be available to the CITY or its authorized agents and representatives upon request during normal business hours at mutually convenient times.

ENGINEER agrees to indemnify and hold the CITY, its officers, agents, and employees harmless from and against any and all actions, claims, suits, damages, liability or proceedings of any kind or character whatsoever, including reasonable attorney's fees, which may arise from or in connection with the negligent performance of services hereunder. This section does not require the ENGINEER to indemnify the CITY, its officers, agents or employees from claims or liability arising solely from the acts or omissions of the CITY, its officers, agents or employees.

During the term of this Agreement, the ENGINEER shall maintain in effect at all times, and provide proof of such coverage to the CITY, insurance coverage for this Project at the limits set forth herein:

Commercial General Liability Insurance: The ENGINEER shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall include state employees as additional insured, shall contain no special limitations on the scope of its protection afforded to state employees, and shall be primary with respect to any insurance or self-insurance programs covering state employees.

Professional Liability Insurance: The ENGINEER shall maintain professional liability insurance with a limit of not less than \$250,000 per occurrence. Such insurance shall be continued for a minimum of three years after the date of the certification of the final Consultant's payment request.

Business Automobile Liability Insurance: The ENGINEER shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

Workers' Compensation Insurance: The ENGINEER shall maintain Workers' compensation and employer's liability insurance as required by South Dakota law.

Certificates of Insurance: Upon request, ENGINEER shall furnish the CITY with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and provide that such insurance shall not be canceled, except on 30 days' prior written notice to the CITY. ENGINEER shall furnish copies of insurance policies if requested by the CITY.

Any notice provided for or permitted by this Agreement shall be sufficient when mailed by registered or certified mail, return receipt requested, postage prepaid; sent by telegram, or

telex, or telecopy or other similar facsimile communication, confirmation received; or when given by telephone, and confirmed in writing sent by any of the above methods on the same day; addressed to the parties as shown on the Executed Agreement, or such other address as may be provided by any party by notice, and shall be deemed effective upon receipt:

F. PAYMENTS TO THE ENGINEER

The amounts due shall be paid to the ENGINEER on a monthly basis, on actual services performed. ENGINEER will submit monthly invoices with each request for payment. Payment will be made in accordance with SDCL Ch. 5-26 upon receipt of a properly completed voucher and supporting invoice. ENGINEER's expenses will not be paid as a separate item.

There shall be no charge to the CITY for preliminary or review drawings and specifications and up to 4 sets of final drawings and specifications. All sets above 8, including postage and binding, will be charged to the CITY as a reimbursable expense at cost, (no profit).

The CITY will make no extra payment for Record Drawings ("as built") unless in the opinion of the CITY the magnitude of change orders and/or observed field conditions are significant enough to warrant a negotiated hourly or lump sum payment for same.

ENGINEER planning for change orders resulting from a Program Change on the part of the CITY will be negotiated on an hourly or lump sum payment.

If in the Construction Phase the Contractor's completion date is exceeded, and if liquidated damages are assessed the Contractor, the ENGINEER will be compensated for his extra services beyond the completion date by sharing a negotiated portion of said liquidated damages.

G. BASIS OF COMPENSATION

The ENGINEER shall be paid at the normal hourly rates and chargeable expenses up to a maximum of \$ 62,575.00 or as approved by separate agreements. The hourly rates and estimated hours to complete this work are shown on the Attachments. If the ENGINEER anticipates that this amount will be exceeded, he shall first gain permission to exceed from the CITY. The rates may change on an annual basis.

Attachment A

Maximum Limiting Fees for Engineering Services Required for the Preliminary Survey
and Preparations of Plans and Specifications the Reconstruction of Lombardy Drive
Rapid City Project No. (50133) ST04-1078

	Hourly Rate	Total Estimated Hours	Estimated Cost
Project Manager	\$ 70.00	20	\$ 1,400.00
Engineer I	\$ 70.00	90	\$ 6,300.00
Engineer III	\$ 55.00	120	\$ 6,600.00
Engineer IV	\$ 45.00	40	\$ 1,800.00
Draftsman I	\$ 45.00	80	\$ 3,600.00
Registered Land Surveyor	\$ 60.00	20	\$ 1,200.00
Survey Crew	\$ 90.00	30	\$ 2,700.00

MAXIMUM LIMIT AMOUNT

\$ 23,600.00

CONTACT PERSONS

CITY: Joe Jagodzinski, Project Manager
Consultant: David Jagim, Manager

Attachment B

Maximum Limiting Fees for Engineering Services Required for the Bid Letting Services
for the Reconstruction of Lombardy Drive
Rapid City Project No. (50133) ST04-1078

	Hourly Rate	Total Estimated Hours	Estimated Cost
Project Manager	\$ 70.00	10	\$ 700.00
Engineer I	\$ 70.00	10	\$ 700.00
Engineer III	\$ 55.00	5	\$ 275.00
Engineer IV	\$ 45.00		\$ -
Draftsman I	\$ 45.00		\$ -
Registered Land Surveyor	\$ 60.00		\$ -
Survey Crew	\$ 90.00		\$ -
MAXIMUM LIMITING AMOUNT			\$ 1,675.00

CONTACT PERSONS

CITY: Joe Jagodzinski, Project Manager
Consultant: David Jagim, Manager

Attachment C

Maximum Limiting Fees for Engineering Services Required for the Contract
Administration, Construction Survey, Inspection and Testing for the Reconstruction of
Lombardy Drive
Rapid City Project No. (50133) ST04-1078

	Hourly Rate	Total Estimated Hours	Estimated Cost
Project Manager	\$ 70.00	30	\$ 2,100.00
Engineer I	\$ 70.00	120	\$ 8,400.00
Engineer III	\$ 55.00	140	\$ 7,700.00
Engineer IV	\$ 45.00	220	\$ 9,900.00
Engineer Technician II	\$ 40.00	80	\$ 3,200.00
Registered Land Surveyor	\$ 60.00	10	\$ 600.00
Survey Crew	\$ 90.00	60	\$ 5,400.00
MAXIMUM LIMIT AMOUNT			<hr/> \$ 37,300.00

CONTACT PERSONS

CITY: Joe Jagodzinski, Project Manager
Consultant: David Jagim, Manager

INTERMEDIATE GOAL DATES:

Preliminary Design Inspection – Week of May 2, 2005
Submit 95% Plans for Review – June 10, 2005
Final Plans to City for Approval – June 17, 2005
Tentative Date for Advertisement for Bids – Week of June 20, 2005
Tentative Bid Opening Date – Week of July 11, 2005

WORK ORDER COMPLETION DATE MARCH 31, 2006

APPROVED BY:

Consultant:



David J. Jagim, Manager
Brosz Engineering, Inc.

Authorized by:

Jim Shaw, Mayor
City of Rapid City

Attest:

James F. Preston, Finance Officer
City of Rapid City