



PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of February 9, 2006, between CITY OF RAPID CITY (CLIENT) and STANLEY CONSULTANTS, INC. (CONSULTANT). CLIENT intends to Develop a Funding Brochure for The Canyon Lake Dam Improvement 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: William E. Holman
William E Holman – Project Manager

By: _____
Jim Shaw – Mayor

Attest: Melissa Lidberg
Melissa Lidberg – Marketing
Coordinator

Attest: _____
James F. Preston – Finance Officer

Address for giving notices:

Address for giving notices:

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

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

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

1. Meet with the City and stakeholders to discuss the background of the project and the expectations of the stakeholders.
2. Meet with City personnel to review project files and collect background information.
3. Visit site to observe project features. Document observations with photographs.
4. Develop a list of recommended tasks for inclusion in the improvement project based on expectations of stakeholders, review of project documents and site observations.
5. Develop an estimate of cost for engineering studies and design for the recommended tasks.
6. Develop conceptual level cost estimates for construction of recommended tasks.
7. Prepare a draft Funding Brochure. The brochure will include the following:
 - a. Description of the Funding Request (initial request will be for the cost of engineering studies and conceptual design)
 - 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 Stakeholders
 - i. Letters of support from stakeholders and residents
8. Following client/stakeholder review, a final Funding Brochure will be prepared incorporating reviewing comments and recommendations.

Stanley appreciates the importance of schedule on this project and proposes to complete a draft brochure within 15 working days of receiving the Notice-To-Proceed. A final brochure will be provided within 5 working days of receiving the City's and stakeholder's comments on the draft submittal.

EXHIBIT 2

COMPENSATION

Stanley Consultants proposes to perform the above-described work for a “lump sum” fee of \$9,750. Additional services may be provided by amending this contract, with the approval of Stanley Consultants and the City of Rapid City.



Standard Terms and Conditions

Exhibit 3

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.

3.1.1 "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.

3.1.2 Labor furnished by CLIENT will be included in construction cost at current market rates, including a reasonable allowance for overhead, fringe benefits, and profit. Materials and equipment furnished by CLIENT will be included at current market prices F.O.B. project site, except that used material and equipment shall be included as if purchased new for project.

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.

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

4.13 **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.

ACORD CERTIFICATE OF LIABILITY INSURANCE

CSRW 021406-10 DATE (MM/DD/YYYY)
SCCOM-1 02/09/06

PRODUCER Miller & Harrison Insurance 100 W. Second St. Muscatine IA 52761 Phone: 563-263-6044 Fax: 563-263-6667	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Stanley Consultants, Inc. 5775 Wayzata Blvd. #955 Minneapolis MN 55416	INSURER A: Travelers Property Casualty	25674
	INSURER B: The Travelers Indemnity Co.	25658
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A X	GENERAL LIABILITY	630-4885B479-TIL-06	01/01/06	01/01/07	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:						
<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						
A X	AUTOMOBILE LIABILITY	810-4885B479-TIL-06	01/01/06	01/01/07	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS					
<input checked="" type="checkbox"/> NON-OWNED AUTOS						
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
						\$
	<input type="checkbox"/> DEDUCTIBLE					\$
	RETENTION \$					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	PKUB-4885B47-9-06	01/01/06	01/01/07	WC STATUTORY LIMITS <input checked="" type="checkbox"/> OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
					E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is included as an additional insured on general and auto liability.

CERTIFICATE HOLDER RAPI002 City of Rapid City, SD 300 Sixth Street Rapid City SD 57701	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Michael Harrison <i>Michael Harrison</i>
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PW021406-10

PROFESSIONAL LIABILITY
ARCHITECTS/ENGINEERS

INSURED: SC COMPANIES, INC.
Policy AEA 00-822-09-75

MEMORANDUM OF INSURANCE
ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY

Addressee:

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

This memorandum is issued as a matter of information only and confers no rights upon the holder. By its issuance the Company does not alter, change, modify or extend the provisions of said policy and does not waive any of its rights thereunder.

Name and Address of Insured:

Stanley Consultants, Inc.
5775 Wayzata Blvd. #955
Minneapolis, MN 55416

Policy Period: 08/05/05 to 08/05/06

\$ 1,000,000 Per Claim limit of liability (including claims expenses)
\$ 1,000,000 Aggregate limit of liability (including claims expenses)

The policy provides contractual liability coverage for liability of others which the insured assumes under a written contract provided such liability is caused solely by the insured's negligent act, error or omission.

In the event of the cancellation of the Insurance as shown herein, the Continental Casualty Company or its authorized representative will provide thirty (30) days prior written notice to the party to whom this certificate is addressed at the address stated herein. The mailing of such notice shall be sufficient proof of notice.

The above named insured has in force, on the date indicated below, a policy of professional liability insurance issued by the Continental Casualty Company with a limit of liability of not less than the amount indicated above.

Dated at: Chevy Chase, Maryland

Date February 9, 2006

VICTOR O. SCHINNERER & CO.
BY:

Authorized Representative