

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

Date:

Project Name & Number: Knollwood Elements 2 & 20 Project No. DR04-1390

CIP #: 50312

Project Description: Analysis and design of drainage elements 2 and 20 in the Knollwood drainage basin.

Consultant: FMG, INC.

Original Contract Amount: \$169,910.00

Original Contract Date: 5/21/07

Original Completion Date: 11/19/07

Amendment Number:

Amendment Description:

Current Contract Amount: _____

Current Completion Date: _____

Change Requested: _____

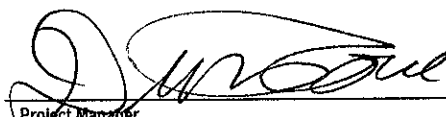
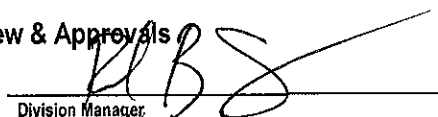
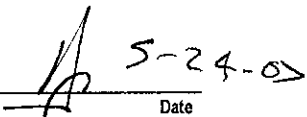
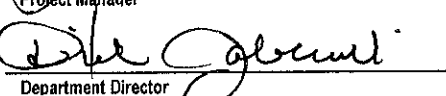
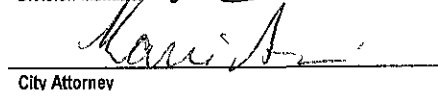
New Contract Amount: _____ \$0.00

New Completion Date: _____

Funding Source This Request:

Amount	Dept.	Line Item	Comments
\$169,910.00	8911	4371	
		4223	
\$169,910.00	Total		

Agreement Review & Approvals


 Project Manager Date: 5/24/07	 Division Manager Date: 5/24/07	 City Attorney Date: 5-24-07
 Department Director Date: 5/24/07	 City Attorney Date: 5/29/07	

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
5/29/07		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
Cash Flow		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N

**PROFESSIONAL SERVICES AGREEMENT
for ENGINEERING SERVICES**

This AGREEMENT is made this 21ST day of May, 2007 by and between the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701, hereinafter called the Client, and FMG, Inc., 3700 Sturgis Road, Rapid City, SD 57702, hereinafter called the Consultant.

The Client agrees to employ the Consultant to render Engineering services in connection with the Client's projects described as:

**Knollwood Drainage Outfall Elements 2 & 20
Project No. 50312-DR04-1390**

It is agreed that the Consultant shall perform the services and the Client shall make payment for same in accordance with the terms and conditions set forth in the attached Articles and Exhibits which are herewith made a part of this Agreement. The Agreement between the parties consists of these terms, Exhibits, attached proposals, and other attachments noted. Together, these elements constitute the entire Agreement superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this Agreement must be mutually agreed to in writing.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement (in duplicate) on the day and year first mentioned above.

CLIENT:
CITY OF RAPID CITY

By: _____

Title: _____

Date: _____


ATTEST:

By: _____

Title: _____

Date: _____

CONSULTANT:
FMG, INC.

By:  _____
Jerry D. Foster, P. E.

Title: Vice-President

Date: 05/21/07

ARTICLE I - PROJECT PROVISIONS

A. PROJECT DESCRIPTION

The City of Rapid City proposes to construct storm water facilities, specifically the Knollwood Drainage Basin (Elements 2 & 20) as outlined in the Knollwood Drainage Basin Design Plan. Element 20 is a conveyance structure beginning at Rapid Creek, following Creek Drive to near the railroad track, thence westerly across City owned property to Center Street and then crossing Center Street at a point intersecting Element 2. Element 2 represents an existing open channel north of Center Street conveying water from Element 3 to Element 20. The channel is not well defined, and due to potential development, the location will have to appropriately identified.

The City of Rapid City has recently purchased Tract A lying directly south of the railroad. The design of Element 20 shall traverse said Tract A in such a manner as to accommodate the drainage needs and at the same time, reserve as much of Tract A as possible for resale by the City.

Phase 1 engineering services for the proposed project include drainage facility research and alignment, route survey, plat and/or easement preparation, detailed hydraulic analysis, culvert crossings, irrigation diversion structures, energy dissipation structures, geotechnical evaluation, engineering design and plan preparation, preparation of opinion of probable cost, specifications and bidding documents.

Phase II engineering services for the proposed project include project construction management, pay requests, change orders, construction staking (control only), testing, shop drawing review and approval and full time construction observation.

B. SCOPE OF SERVICES

B.1 Engineering Design, Contract Document Preparation, and Bidding Period Services

All services will be completed by FMG, Inc. Subconsultants will not be utilized unless otherwise approved by the City of Rapid City.

The anticipated services are set forth in the "RFP For Knollwood Drainage Outfall elements 2 & 20" from the City of Rapid City. The RFP is attached hereto as Attachment A.

The City shall furnish copies of existing reports, studies, mapping, and any other existing information that is appropriate and relevant to the project.

The tasks to complete the project requirements are generally described below.

Investigative Services

The following items are included in the scope of Investigative Services:

- Kickoff Meeting
- Field Survey including corner search, control, and topo of project route
- Extend field profile survey upstream of project site to the west side of Cambell Street for preliminary review of future projects.

- Utility locations by SD One Call
- Coordination of Utility Locations with respective company
- Obtain land ownership records
- Environmental reconnaissance of City purchased land and channel route
- Wetland Identification and nonjurisdictional request
- Determine rail crossing requirements
- Floodplain design requirements
- Game Fish and Parks requirements at outlet to Rapid Creek
- Irrigation ditch issues
- City reports, as built, historic platting issues, etc.
- Greenway/bikepath/multiuse – design and funding issues
- Geotechnical Investigation

Conceptual Routing Study and Report

The following items are included in the scope of Conceptual Routing Study and Report.

- Hydrology update to determine 2 year flows and eliminate flow split
- Approximation of Existing Flooding Issues at Centre Street
- Conceptual Stormwater Quality Design
- Conceptual Design with Alternate Routes/Multipurpose/Property Ownership Issues
- Conceptual Construction Cost Estimate
- Conceptual Routing Report
- Meetings with City and Landowners

35% Design

The following items are included in the scope of the 35% Design. Design services are based on selected route from Conceptual Study

- Design Calculations and Analysis
- Engineering Drawings including Title, Plan & Profile, Cross Sections, and other sheets as required for 35% design.
- Structure design including drops, box culvert, culvert inlet and outlet systems
- Irrigation Ditch Crossing design
- Water Quality Improvement design
- Utility Upgrades at conflict points
- Coordination with Private Utility Companies
- Onsite Waste Soil Disposal Site layout
- Preliminary Analysis of Future Roadway grades/sections adjacent to channel
- Reviews/preliminary analysis/coordination for future upstream improvements
- Preliminary Cost Estimate
- Preliminary Design Report
- Meetings/Oversight/Reviews
- 11-6-19 Submittal
- Design Exception Request
- Assist City with Right of Way Negotiations

Final Design

The following items are included in the scope of the Final Design

- Design Calculations and Analysis
- Revise 35% design based on City Review comments
- Engineering Drawings necessary for the full project design and construction
- Structure design for drops, box culvert, culvert inlet and outlet systems
- Irrigation Ditch Crossing design
- Water Quality Improvement design
- Utility Upgrades design at conflict points
- Coordination with Private Utility Companies
- Waste Soil Disposal Site
- Temporary Traffic Control Concept Layout
- Project Sequencing
- Cost Estimate
- Design Report
- Stormwater Pollution Protection Plan
- Prepare Floodplain Development Permit Application (no FEMA submittals)
- Prepare Corps Wetlands Nationwide Permit Application
- Easement Exhibits/ROW Plats and assist City with Right of Way Negotiations
- Detailed specifications manual and bid form
- Meetings/Oversight/Reviews
- Final Revisions from 95% submittal to 100% submittal

Bidding Phase

The following items are included in the scope of the Bidding Phase Services

- Prebid Meeting
- Plans and Specifications Interpretation during bidding period
- Prepare and Issue Addenda
- Attend Bid Opening
- Prepare Bid tabulations and make reviews and recommendation for award
- Prepare Contract and Submit to Contractor
- Reviews Contracts and submit to City for Approvals and Signature
- Issue Notice to Proceed

B.2 Construction Phase Services

Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Consultant shall:

1. Consult with Client and act as Client's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities, and authority of Consultant as assigned in the General Conditions shall not be modified, except as Consultant may otherwise agree in writing. All of Client's instructions to Contractor will be issued through Consultant, which shall have authority to act on behalf of Client in dealings with Contractor to the extent provided in this Agreement and the General Conditions except as otherwise provided in writing.

2. Provide the services of a Resident Project Representative (RPR) at the Site to assist the Consultant and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Attachment B. The furnishing of such RPR's services will not limit, extend, or modify Consultant's responsibilities or authority except as expressly set forth in Attachment B.
3. Conduct a Pre-Construction Conference prior to commencement of Work at the Site.
4. Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Consultant, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
5. Provide initial survey control points for the use by the Contractors Surveyor.
6. Make visits to the Site at intervals appropriate to the various stages of construction, as Consultant deems necessary, to observe as an experienced and qualified design professional the progress and quality of Contractor's executed Work. Such visits and observations by Consultant, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Consultant in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Consultant will determine in general if the Work is proceeding in accordance with the Contract Documents, and Consultant shall keep Client informed of the progress of the Work.
 - a. The purpose of Consultant's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Consultant to better carry out the duties and responsibilities assigned to and undertaken by Consultant during the Construction Phase, and, in addition, by the exercise of Consultant's efforts as an experienced and qualified design professional, to provide for Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Consultant shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety on the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

7. Consultant shall have the authority to recommend to Client that Contractor's Work be rejected while it is in progress if, on the basis of Consultant's observations, Consultant believes that such Work will not produce a completed Project that conforms generally to the Contract Documents or that it will threaten the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
8. Consultant will issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Consultant may issue Field Orders authorizing minor variations in the Work from the requirements of the Contract Documents.
9. Consultant will recommend Change Orders and Work Change Directives to Client, as appropriate, and prepare Change Orders and Work Change Directives as required.
10. Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Consultant shall meet any Contractor's submittal schedule that Consultant has accepted.
11. Consultant will assist the Client in evaluating and determining the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
12. Consultant will require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by laws and regulations or the Contract Documents. Consultant's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests.
13. Consultant will render formal written decisions on all duly submitted issues relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of the Work; review each duly submitted Claim by Client or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Consultant in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

14. Based on Consultant's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Recommend the amounts the Contractor be paid. Such recommendations of payment will be in writing and will constitute Consultant's representation to Client, based on such observations and review, that, to the best of Consultant's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Consultant's responsibility to observe Contractor's Work. In the case of unit price work, Consultant's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
 - b. By recommending any payment, Consultant shall not thereby be deemed to have represented that observations made by Consultant to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Consultant in this Agreement and the Contract Documents. Neither Consultant's review of Contractor's Work for the purposes of recommending payments nor Consultant's recommendation of any payment including final payment will impose on Consultant responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Consultant to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Client free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Client and Contractor that might affect the amount that should be paid.
15. The Consultant, RPR and assistants will perform quality control testing of materials during the construction in accordance with the requirements and frequencies set forth in the construction documents and the latest revision of the City of Rapid City Standard Specifications for Public Works Construction.
16. Consultant will receive, review and transmit maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.

17. Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, the Consultant will, in company with Client and Contractor, conduct an inspection to determine if the Work is substantially complete. If after considering any objections of Client, Consultant considers the Work substantially complete; Consultant shall deliver a certificate of Substantial Completion to Client and Contractor.
18. Promptly after notice from Contractor that Contractor that the Work is complete, the Consultant will, in company with Client and Contractor, conduct an inspection to determine if the Work is complete. Consultant shall deliver a certificate of final Completion to Client and Contractor including the date for the start of the warranty period.
19. The Construction Phase will commence with the execution of the first construction Contract for the Project or any part thereof and will terminate upon written recommendation by Consultant for final payment to Contractors.
20. Consultant shall not be responsible for the acts or omissions of any Contractor, or of any subcontractors, suppliers, or other individuals or entities performing or furnishing any of the Work. Consultant shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

C. PAYMENTS OF THE CONSULTANT

For the engineering services performed by the Consultant under this Agreement, and as full compensation therefor, and for all expenditures made and all expenses incurred by the Consultant in connection with the Agreement, except as otherwise expressly provided herein, subject to and in conformance with all provisions of the Agreement, Client will pay consultant as follows:

- 1.1 For the Engineering Services described in Section B, Client will pay Consultant in accordance with the provisions of Article II. The services will be billed on a unit-cost basis. The unit costs are considered fixed; however, the task subtotals and total fee will vary depending on the actual project work requirements and conditions. The estimated fees for the services outlined in Section B are as follows.

Investigative Services	\$29,580.00
Conceptual Routing Study	\$13,140.00
35% Design	\$33,130.00
Final Design	\$40,075.00
Bidding Phase	\$4,115.00
Construction Phase	\$49,870.00
TOTAL ESTIMATED PROJECT FEES	\$169,910.00

Total project fees will not exceed the estimated fee without justification from the Consultant and prior approval of the City of Rapid City. Construction Phase fees will be renegotiated if project is not constructed in the 2008.

- 1.2 For additional services rendered pursuant to Article II, Section 7.0, Client will pay Consultant on the basis of the Consultants hourly rates.

D. BILLING RATES

Professional Engineer/Principal	\$100.00/hour
Professional Engineer/Design Engineer	\$85.00/hour
Cadd Technician	\$50.00/hour
Registered Land Surveyor	\$65.00/hour
2 Man Survey Crew	\$100.00/hour
Clerical	\$40.00/hour
Environmental Scientist	\$55.00/hour
Field Engineering Tech/Lab Manager	\$55.00/hour
Senior Materials Specials/Principal	\$100.00/hour
Soils Technician	\$45.00/hour

E. SCHEDULE

1.1 The provisions of this section have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of construction. Consultant's obligation to render services hereunder will extend for a period which may reasonably be required for completion of the project including extra work and extensions thereto.

1.2 Consultant's services shall be in accordance with the following schedule which differs from the RFP.

Contract Negotiations Complete	May 22, 2007
Notice to Proceed with Design	June 5, 2007
Conceptual Design Submittal	July 23, 2007
Preliminary Design Submittal	October 19, 2007
100% Plans and specifications	November 19, 2007
Advertising and BID	TBD

ARTICLE II - GENERAL CONDITIONS

SECTION 1.0 - STANDARD OF CARE

- 1.1 Consultant agrees to perform the services set forth in this Agreement in accordance with generally accepted professional practices, in the same or similar localities, related to the nature of the work accomplished, at the time the services are performed. Consultant's services shall not be subject to any other express or implied warranties whatsoever.
- 1.2 Client recognizes that site characteristics and subsurface conditions may vary from those observed at locations where observations, borings, surveys, or explorations are made, and that site conditions may change with time. Client further recognizes that even with a comprehensive sampling and testing program, implemented with experienced personnel who function in accordance with a professional standard of care, there may be failure to detect certain conditions. Client will furnish to Consultant all reports, data, studies, plans, specifications, documents and other information deemed necessary by Consultant for performance of the services. Consultant may rely upon Client provided documents in performing the services but Consultant assumes no responsibility or liability for the accuracy of such documents. Data, interpretations, and recommendations by Consultant will be based solely on information available to Consultant, and Consultant will not be responsible for hidden conditions or other parties' interpretations or use of the information developed.

SECTION 2.0 SITE ACCESS AND RIGHT OF ENTRY

- 2.1 Client will grant or obtain free access to the site for all equipment and personnel necessary for Consultant to perform the work set forth in this Agreement. Client will notify any and all possessors of the project site that Client has granted Consultant free access to the site. Consultant will take reasonable precautions to minimize damage to the site, but it is understood by Client that, in the normal course of work, some damage may occur but in the absence of any written damage agreement, Consultant shall not be liable or responsible for such damage. Any additional costs to facilitate site access will be charged to the Client at cost.

SECTION 3.0 TIME

- 3.1 The Consultant will perform the professional services in a timely manner consistent with sound engineering practices.

SECTION 4.0 DELAYS

- 4.1 It is recognized that unforeseen events or circumstances may arise causing delays beyond the control of either the Client or the Consultant. Whenever such delays occur or are about to occur, the Consultant shall immediately notify the Client. If such delays are not the fault of the Consultant and will increase his cost of performing the services required under this Agreement, the parties hereto shall enter into a written agreement describing the additional cost and the compensation therefor.

SECTION 5.0 OWNERSHIP OF DOCUMENTS

- 5.1 Reports, drawings, specifications, field data, laboratory test data, calculations, estimates, and other materials resulting from Consultant's efforts are intended solely for purposes of this Agreement; any reuse by Client or others for purposes outside of this Agreement or any failure to follow Consultant's recommendations, without Consultant's written permission, shall be at the user's sole risk. Client will furnish such reports, data, studies, plans, specifications, documents, and other information deemed necessary by Consultant for proper performance of its services. Consultant may rely upon Client-provided documents in performing the services required under this Agreement; however, Consultant assumes no responsibility or liability for their accuracy. Client-provided documents which are prepared, as instruments of service, shall remain

Consultant's property and consultant shall retain copyrights to these materials. Consultant will retain all pertinent records relating to services performed for a period of six years following submission of a report during which period the records will be made available to Client at all reasonable times.

SECTION 6.0 SAFETY AND WORK PROGRESS

- 6.1 The Consultant will perform professional services in accordance with custom and practice within the locality and in no instance is to be responsible for methods of performance of the work, superintendence, sequencing of construction, or safety in or about the jobsite.

SECTION 7.0 CHANGE IN SCOPE

- 7.1 It is recognized by the parties of this Agreement that unforeseen circumstances may arise during the development and completion of the project which will dictate changes in the scope of work, the procedures, and the Consultant's fees.
- 7.2 Consultant shall identify the changed conditions which in Consultant's judgment make such modification necessary, and Consultant and Client shall promptly and in good faith enter into modification of the work scope and fees of this agreement to help permit Consultant to continue to meet Client's needs. If mutually agreed in writing by the Client and the Consultant, the Consultant shall perform or obtain the services of others to perform any additional activities deemed necessary for completion of the project. Additional Services are not included as part of the original proposal and will be paid by the Client as provided in writing through subsequent work proposals, at the established rates and fees.

SECTION 8.0 CHANGE ORDERS

- 8.1 Whenever there occurs any change(s) affecting the scope or nature of the work and the terms and requirements of this Agreement, the Consultant shall issue a written supplemental agreement to be agreed upon by both parties hereto and become a part of this Agreement. The Supplemental Agreement shall describe the nature of and the reasons for such change and any change in compensation to be paid the Consultant by the Client.

SECTION 9.0 INVOICES AND PAYMENT

- 9.1 The Consultant will submit invoices to the Client monthly and/or a final bill upon completion of services. The invoices will be prepared in accordance with the applicable cost items indicated in Article I proposal(s), related attachments, and for any Additional Services provided.
- 9.2 If Client objects to all or any portion of any invoice, Client will so notify Consultant in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid.
- 9.3 Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. Client will pay additional charge of one-and-one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount, excepting any portion of the invoiced amount in dispute and resolved in favor of Client. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. All time spent and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount will be paid by Client to Consultant per Consultant's current fee schedules. Client's failure to pay Consultant within sixty (60) days may constitute a breach of this Agreement.

- 9.4 Payment to Consultant by Client is in no instance contingent upon Client's receipt of payment from any additional party including, but not limited to, insurance companies or governmental compensation funds.

SECTION 10.0 DISPUTES

- 10.1 DELETED

SECTION 11.0 RISK ALLOCATION

- 11.1 DELETED

- 11.2 DELETED

- 11.3 The Owner and Client acknowledges that the Consultant is a corporation and agrees that any claim made by the Owner or Client arising out of any act or omission of any director, officer or employee of the Consultant in the execution or performance of this agreement, shall be made against the Consultant and not against such director, officer or employee.

- 11.4 DELETED

SECTION 12.0 INSURANCE

- 12.1 The Consultant represents and warrants that it and its agents, staff, and subconsultants employed by it is and are protected by worker's compensation insurance and that the Consultant has such coverage under public liability and property damage insurance policies which the Consultant deems to be adequate. The Client shall be named as additional insured on the public liability and property damage insurance. Certificates for all such policies of insurance shall be provided to the Client prior to beginning work.

SECTION 13.0 ASSIGNS

- 13.1 Neither the Client nor the Consultant shall delegate, assign, sublet, or transfer his duties or interest in this Agreement without the written consent of the other party.

SECTION 14.0 TERMINATION

- 14.1 This Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the

written notice. In the event of termination, the Consultant shall be paid for services performed to the termination notice date plus reasonable termination expenses.

- 14.2 In the event of termination, or suspension for more than three (3) months prior to completion of all drawings, specification, reports and other instruments contemplated by this Agreement, the Consultant may complete such analyses and records as are necessary to complete his files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of the Consultant in completing such analyses, records and reports.

SECTION 15.0 FORCE MAJEURE

- 15.1 Neither party to this Agreement will be liable to the other party for delays in performing the services, nor for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

SECTION 16.0 SEVERABILITY AND SURVIVAL

- 16.1 Any element of this Agreement later held to violate a law shall be deemed void, and all remaining provisions shall continue in force. However, Client and Consultant will in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision. All terms and conditions of this Agreement allocating liability and defining indemnities between Client and Consultant shall survive the completion of the services hereunder and the termination of this Agreement for any cause.

SECTION 17.0 GOVERNING LAW

- 17.1 The law of the State of South Dakota will govern the validity of the Agreement terms, their interpretation and performance.
- 17.2 This Agreement is binding upon the parties, their heirs, successors and assigns.
- 17.3 The parties have read the foregoing, understand completely the terms and conditions, and willingly enter into this Agreement.

**REQUEST ENGINEERING DESIGN PROPOSALS
FOR
KNOLLWOOD DRAINAGE OUTFALL ELEMENTS 2 & 20
PROJECT NO. 50312-DR04-1390**

PROJECT DESCRIPTION

The City of Rapid City proposes to design and construct storm water facilities, specifically the Knollwood Drainage Basin (Elements 2 & 20) as outlined in the Knollwood Drainage Basin Design Plan. Element 20 is a conveyance structure beginning at Rapid Creek, following Creek Drive to near the railroad track, thence in a westerly direction across City owned property and then crossing Center Street at a point intersecting Element 2. Element 2 represents an existing open channel north of Center Street conveying flows from Element 3 south to Element 20. This channel is not well defined and due to potential development, the location will need to be appropriately identified.

The City of Rapid City has recently purchased "Tract A" lying directly south of the railroad. The design of said drainage Element 20 shall traverse said Tract A in such a manner as to accommodate the drainage need yet at the same time reserve as much of Tract A as possible for resale by the City.

Phase I design services shall include drainage facility research and alignment, all surveying, plat and/or easement preparation, detailed hydraulic analysis, culvert crossings, irrigation diversion structures, energy dissipation structures, actual design of all facilities and preparation of detailed construction plans, specifications and bidding documents, including engineer's cost estimate, for the project.

Phase II shall include project construction management, pay requests, change orders, construction staking (control only), testing, shop drawing approvals and full time construction observation.

Design criteria for this project shall include The Rapid City Drainage Criteria Manual and appropriate bibliography references, the Knollwood Drainage Basin Design Plan, the Rapid City Utility Construction Code, Ten States Standards and the Rapid City Standard Specifications for Public Works Construction – version 2004.

The project currently has a total budget of \$1,930,000, including design, construction and property acquisition. Funding for the project is \$1,000,000 from the Vision 2012 Program and \$930,000 from 8911 Drainage Funds.

SCOPE OF SERVICES REQUESTED

1. PRELIMINARY DESIGN PHASE

- 1.1. Review information; pertinent data, reports, previous plans, studies, etc. in addition to background information listed above.
- 1.2. Perform the following planning tasks:
 - 1.2.1. Perform site surveys sufficient for design plan preparation. The route and topography survey shall be tied to at least two City of Rapid City Monument Control system monuments utilizing State plane coordinates.
 - 1.2.2. Determine the appropriate drainage route from the north side of Centre Street, end of Element 2, to the south side of Centre Street thence easterly across City property to Creek Drive thence south to Rapid Creek.
 - 1.2.3. Perform preliminary horizontal and vertical alignment analysis.
- 1.3. Recommend: The appropriate means of conveyance for specific volumes of storm water, e.g., open channel, box culvert, street and irrigation crossings, inlet and discharge structures, materials, alignments, etc.].
- 1.4. Prepare preliminary opinion of probable construction cost.
- 1.5. Assist the City with property acquisition for re-alignment of Element 2, easement across City owned Tract A, access from Tract A to Creek Drive, construction

easements along Creek Drive, irrigation ditch encroachments, etc.; perform legal survey for property; and prepare plats and/or easement exhibits. [

- 1.6. Define the scope of geotechnical investigations as may be necessary for final design, involve the City in the Consultants negotiation of a sub-contract with geotechnical engineering services, and contract with geotechnical engineer.
- 1.7. Prepare preliminary plan and profile sheets including locations of proposed drainage facilities and existing utilities as well as other obstructions to be encountered within and immediately adjacent to the proposed route.
- 1.8. Prepare Preliminary Design Report, including required easements and authorizations that must be obtained by the City to accommodate implementation of the proposed project. Conduct a review meeting with City staff.

2. FINAL DESIGN

- 2.1. Provide complete plans and specifications for a unit price construction contract. Plan sheets shall be prepared utilizing the latest City of Rapid City Drafting Standards.
- 2.2. Provide route and topo survey, [establish land ties and bench marks, locate property corners, and field locate all existing utilities]. At least two control points at each end of the project shall be tied vertically and horizontally to the existing City of Rapid City Area Monuments Control utilizing the state plane coordinate system.

Topographic survey and design layout shall utilize a local datum tied to at least one of the Rapid City Area Monuments tied control points. Scale of plan & profile sheets, 1" = 20' Horiz., 1" = 5' Vert. Construction staking information shall include either of the following formats:

2.2.1. On the Plans

- Station, offset and coordinates of all PC's, PI's, PT's, and any angle points
- Curve data
- Station, offsets and coordinates for all items of work requiring field staking
- Coordinates and description of intervisible control points

2.2.2. In tabular format on a plan sheet

- Coordinates and description of intervisible control points
- Curve data
- Coordinates of all items of work requiring field staking

Benchmark information shall be provided on each sheet.

- 2.3. Provide project layout plan to include lot lines (front and side) and addresses of all properties [adjacent to construction].
- 2.4. Coordinate directly with utility companies' engineering divisions to ensure that all existing utilities are completely and accurately located in the field; that pertinent information regarding depth, material, size, etc. are noted on the plans; and that conflicts requiring relocation of utilities or special construction techniques are fully specified in the contract documents.
- 2.5. Provide general sequence of construction requirements in order to facilitate drainage structures to be completed from confluence with Rapid Creek to the discharge of Element 3.
- 2.6. Provide Detailed Specifications supplementing the current *City of Rapid City Standard Specifications* as necessary.
- 2.7. Provide Traffic Control Plans identifying detour routes and signage for various stages of construction.
- 2.8. Prepare opinion of probable construction cost (engineer's estimate) for the project.
- 2.9. Prepare any permits required with appropriate exhibits.
- 2.10. Deliver the following:
 - Construction plans on CD in AutoCAD Release 14 format or newer, scaled for 22" x 34" printing.
 - All topographic, control, and design points in the .dwg file and in tabular format, both on disk and on a hard copy printout.
 - Complete specifications on disk in Microsoft Word XP. or previous versions, for printing by the City.
 - A unit price cost estimate on disk in Microsoft Excel XP or previous version.

3. BIDDING PHASE

Provide the following standard bidding phase services:

- Submit advertisement for bids to Rapid City Journal and Construction Industry Center
- Print and issue plans and specifications to bidders, and two (2) copies to the City of Rapid City.
- Prepare and submit bid documents on the City of Rapid City Microsoft Excel form
- Direct Pre-bid Conference
- Issue addenda to the bid documents as required
- Attend the bid opening
- Attend the Public Works Committee and Council Meetings as required
- Prepare the Bid Tab in City of Rapid City Microsoft Excel project book format and submit this and a printed hard copy to the Public Works Department within one (1) working day of the bid opening. Forward a copy of the final bid tab to all bidders.
- Prepare contracts and submit to contractor for execution.
- Review construction contract documents and other submittals from contractor and submit to Public Works Department for City Attorney's approval and signatures of the Mayor and Finance Officer.
- Prepare Notice to Proceed and forward to the successful contractor and Public Works Department

END OF PHASE I

BEGINNING OF PHASE II

4. CONSTRUCTION PHASE

Provide construction management services to include:

- Conduct preconstruction conference and periodic progress meetings
- Review and take action on shop drawings, test results, and other submittals
- Distribute Public Service Announcements (P.S.A.'s) to all local media and the Public Works Department. Copies of P.S.A.'s shall be distributed one week prior to start of work or change in operations that may significantly affect the public.

ATTACHMENT A

- Provide daily construction observation and prepare daily report record on City of Rapid City forms. Submit detachable copies to Public Works Department on a weekly basis.
- Provide soil compaction testing according to the Standard Specifications.
- Prepare "As Build" drawings on CD in AutoCAD Release 14 format or newer, scaled for 22" x 34" printing. Submit to Public Works Department.
- Prepare and submit monthly pay requests for consultant and contractor on City of Rapid City forms.
- Prepare and submit project completion punch list items to the Contractor and Public Works Department.
- Prepare letter of certification of substantial completion and start of warranty period.

5. MEETINGS AND SUBMITTALS

5.1. Project team members will include:

5.1.1. The consultant

5.1.2. City Engineering Services staff

- Project management
- Design (Flood Plain Engineer)
- Construction coordination (Traffic Engineer)

5.1.3. Operations Division staff

- Utility Maintenance (service area and O&M related issues)
- Street Department

5.2. Meetings requiring the Consultant's participation will include:

- Kick-off Meeting
- Preliminary Design Report Presentation and Discussion
- Utility companies coordination meeting
- 95% Plans and Specifications Review
- 100% Plans and Specifications Review
- Pre-bid Conference
- Attend Bid Opening

ATTACHMENT A

- Preconstruction Conference
- Construction Progress Meetings
- Committee and Council Meetings as required

5.3. Submittals required during the design phase include:

- Preliminary Design Report
- 95% Plans and Specifications
- 100% Plans and Specifications

PROJECT SCHEDULE

Contract Negotiations Complete	May 9, 2007
Notice to Proceed with Design	May 15, 2007
Preliminary Design Submittal	August 17, 2007
100% Plans and Specifications	September 14, 2007
Advertising and Bid	TBD

PROPOSAL SUBMISSION

Please submit five (5) copies of your proposal no later than April 27, 2007. Interviews will be conducted May 3, 2007 with a recommendation to award a contract to City Council on May 14, 2007.

ATTACHMENT B**RESIDENT PROJECT REPRESENTATIVE**

- A. Consultant shall furnish a Resident Project Representative (RPR), assistants, and other field staff to assist Consultant in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Attachment B may provide full time representation or may provide representation to a lesser degree as work activities require.
- B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, Consultant shall endeavor to provide further protection for Client against defects and deficiencies in the Work. However, Consultant shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- C. The duties and responsibilities of the RPR are limited to those of the Consultant in the Professional Services Agreement with the Client and described as follows:
 - 1. RPR is Consultant's agent at the Site, will act as directed by and under the supervision of Consultant, and will confer with Consultant regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Consultant and Contractor, keeping Client advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Client with the knowledge of and under the direction of Consultant.
 - 2. Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Consultant concerning acceptability.
 - 3. Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 - 4. Liaison:
 - a. Serve as Consultant's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Consultant in serving as Client's liaison with Contractor when Contractor's operations affect Client's on-Site operations.

ATTACHMENT B

- c. Assist in obtaining from Client additional details or information, when required for proper execution of the Work.
5. Report to Consultant when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Consultant.
6. Shop Drawings and Samples:
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Consultant of availability of Samples for examination.
 - c. Advise Consultant and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Consultant.
7. Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Consultant. Transmit to Contractor in writing decisions as issued by Consultant.
8. Review of Work and Rejection of Defective Work:
 - a. Conduct on-Site observations of Contractor's work in progress to assist Consultant in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Consultant whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Consultant of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. Inspections, Tests, and System Startups:
 - a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Client's personnel, and that Contractor maintains adequate records thereof.
 - b. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Consultant.

ATTACHMENT B

10. Records:

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Consultant's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Consultant.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Consultant.

11. Reports:

- a. Furnish to Consultant periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Consultant proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Consultant and Client copies of all inspection, test, and system start-up reports.
- d. Immediately notify Consultant of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern. .

- 12. Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Consultant, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

ATTACHMENT B

13. Completion:

- a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Participate in a final inspection in the company of Consultant, Client, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Consultant concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items) unless authorized by the Consultant.
2. Exceed limitations of Consultant's authority as set forth in the Agreement or the Contract Documents.
3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Client or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Consultant.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Client to occupy the Project in whole or in part.