

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

**Date:**

Project Name & Number: Skyline Drive Restoration Design Phase 1 ST07-1683

CIP #: 50153

Project Description: Phase 1 of Skyline Dr restoration (Fund seeking and preliminary estimate)

Consultant: Stanley Consultants

Original Contract Amount: \$47,750

Original Contract Date: 11-6-07

Original Completion Date: 2-28-08

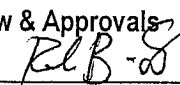
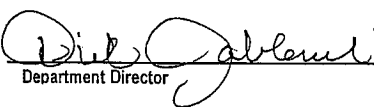
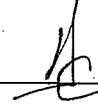
Amendment Number:

Amendment Description:

Current Contract Amount:	\$0.00	Current Completion Date:	NA
Change Requested:	\$47,750.00		
New Contract Amount:	\$47,750.00	New Completion Date:	February 28, 2008

**Funding Source This Request:**

Amount	Dept.	Line Item	Fund	Comments
\$47,750.00	CIP ST	4223	8910	
\$47,750.00	Total			

 _____ Project Manager	<b>Agreement Review &amp; Approvals</b> 11/6/07 _____ Date	 _____ Division Manager
 _____ Department Director	11/7/07 _____ Date	 _____ City Attorney

**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	
Appropriation			Y N
Cash Flow			Y N



PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of October 26, 2007, between CITY OF RAPID CITY (CLIENT) and STANLEY CONSULTANTS, INC. (CONSULTANT). CLIENT intends to perform Phase 1 of the Skyline Drive Restoration Project, CIP 50153 (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: Jane Costello  
Jane Costello, P.E., Project Principal

By: \_\_\_\_\_

Attest: Eric Daly  
Eric Daly, P.E., Project Manager

Attest: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

STANLEY CONSULTANTS  
5775 WAYZATA BOULEVARD, SUITE 300  
MINNEAPOLIS, MN 55416-1235

CITY OF RAPID CITY  
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.

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

Kenneth L. ... 11/1/07  
Attorney Date

**EXHIBIT 1  
SCOPE OF SERVICES**

**PHASE 1 SKYLINE DRIVE RESTORATION PROJECT  
CONCEPTUAL DESIGN STUDY  
RAPID CITY, SOUTH DAKOTA**

**I. PROJECT DESCRIPTION**

This project consists of the improvement and restoration of Skyline Drive for its entire length of 3.3 miles from West Street to Tower Road. Additionally the improvement of Quincy Street/Skyline Drive from West Street to West Boulevard will be included in this project as a “gateway” to the Skyline Drive scenic roadway. A “gateway” feature will also be included at the intersection of Skyline Drive and Tower Road.

The project will be designed in conformance with the following Design Criteria, ranked in order of priority:

- *City of Rapid City Design Policy Standards*
- *City of Rapid City Standard Specifications, 2007 Edition*
- *City of Rapid City Drafting Standards*
- *South Dakota Department of Transportation Road Design Manual*
- *AASHTO Policy on Geometric Design of Highways and Streets, 5<sup>th</sup> Edition*
- *Manual on Uniform Traffic Control Devices, 2003 Edition*

**II. SCOPE OF SERVICES**

Upon written authorization from CLIENT to proceed, the CONSULTANT shall perform Basic Services consisting of those described in paragraphs A through F:

**A. DEVELOP BACKGROUND FOR CONCEPT DEVELOPMENT**

1. Review Background Information – Review available information from CLIENT including Rapid City GIS Maps, benchmark data, water, sanitary sewer and storm sewer maps, the City of Rapid City Engineer’s Estimating Guide and Skyline Drive record plans.
2. Concept and Scope Meeting with City Staff – Attend a meeting with CLIENT personnel to detail the Conceptual Study effort among the various City interests. The meeting will be held in Rapid City at the offices of the CLIENT and will be attended by at personnel from CONSULTANT and the subconsultants.

**B. PERFORM PLANNING TASKS**

1. Establish Roadway Cross Section – Determine the roadway lane widths, shoulder widths, side slopes, and preliminary pavement sections using the appropriate design criteria. Identify preliminary types and locations of roadside protection, such as guardrail and retaining walls. Use available data from CLIENT, including design standards and traffic information, to determine preliminary right-of-way impacts to adjacent property.

2. Evaluate Intersection Improvements – Assess the operational needs on a preliminary, planning level for major intersections of the project.
3. Evaluate Sanitary Sewer Requirements – Identify necessary improvements to existing sanitary sewer facilities throughout the project limits. Incorporate on a planning level any new facilities as specified by CLIENT.
4. Evaluate Water Supply Requirements – Identify necessary improvements to existing water supply facilities throughout the project limits. Incorporate on a planning level any new facilities as specified by CLIENT.
5. Evaluate Drainage Requirements – Identify necessary improvements to existing storm drain facilities within the project limits. Assess the preliminary hydrology of the project area and identify new facilities that are necessary with the roadway reconstruction.
6. Determine Pavement Restoration Plan – Assess the existing pavement condition and make preliminary recommendations for pavement replacement or rehabilitation. The pavement evaluation will be based on visual observations and available information provided by CLIENT. No drilling, borings, or detailed analysis will be performed for this task.
7. Evaluate Street Lighting and Signage – Review existing lighting and signage. Determine preliminary locations for street lighting and additional signing along the corridor.
8. Evaluate Historic Retaining Walls – Make a preliminary determination on how much of the existing stone retaining walls can be preserved and develop replacement alternatives. The geotechnical assessment will be based on review of available information, field observations, and engineering judgment. No drilling, borings, or other detailed geotechnical activities will be undertaken.

#### C. DEVELOPMENT PRELIMINARY AESTHETIC / ENHANCEMENT PLAN

1. Review and Evaluate Landscaping – Assess existing landscape features along corridor. Determine alternatives for additional landscaping features including treatments and types of retaining walls.
2. Develop Gateway Concept at West Boulevard – Identify plan to extend the “identity” of the scenic Skyline Drive to its logical beginning with a gateway at West Boulevard. Provide alternatives for entrance features, visual treatments and guide signage to delineate the route for the traveling public.
3. Develop Gateway Concept at Tower Road – Identify alternatives to provide gateway features at the southern terminus of Skyline Drive at Tower Road.
4. New Trail Access and Scenic Pullout Locations – Identify locations to construct new facilities for trail access and scenic pullouts.

#### D. FUNDING BROCHURE DEVELOPMENT

1. Preliminary Opinion of Project Cost – Assign preliminary project costs for the preferred Skyline Drive restoration concept. CONSULTANT will utilize CLIENT's records pertaining to historical construction prices in developing costs. Estimated contingencies will be included to account for unknowns.
2. Funding Brochure for Congressional Funding – Produce document that will assist in securing funding for design and construction of Phase 2 Skyline Drive Restoration. The document shall include a discussion of the desired concept, the accepted aesthetic plan, estimated preliminary costs and applicable conceptual exhibits. CONSULTANT will furnish ten (10) copies of the Funding Brochure to the CLIENT.
3. Congressional Earmark Questionnaire – CONSULTANT shall develop the information necessary to complete applicable Congressional forms for requesting funds.

#### E. ASSIST IN OBTAINING FUNDING FOR PHASE 2 SKYLINE DRIVE RESTORATION

1. Trips to Washington D.C. – Travel to Washington to meet with South Dakota congressional delegation and other officials. Includes six (6) anticipated trips to Washington for one individual from CONSULTANT to promote funding options for PROJECT.
2. Exploration and Application for Additional Enhancement Funds – Identify and pursue additional funding sources for enhancements for PROJECT.

#### F. PUBLIC INVOLVEMENT

1. Public Information Meeting – Provide exhibits and background information for one public input meeting that will be held by CLIENT. CONSULTANT will not be required to attend the public information meeting.
2. City Council and Committee Meetings – Present PROJECT progress in one meeting each with the Public Works Committee, City Council, and Capital Improvement Plan Committee.

### III. ADDITIONAL SERVICES

CONSULTANT has been selected for preliminary and final design services, bidding services, construction management and construction inspection services for Phase 2 of PROJECT. The scope of services and fees for these activities will be agreed upon at a later date.

ID	Task Name	Duration	Timeline (Qtr 4, 2008)																
			Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov			
1	Notice To Proceed	0 days																	
2	Funding Brochure Information Development	50 days																	
3	Review Background Information	30 days																	
4	Concept and Scope Meeting	1 day																	
5	Establish Roadway Cross Section	40 days																	
6	Determine Intersection Improvements	40 days																	
7	Evaluate Water Supply and Sanitary Sewer Requirements	40 days																	
8	Evaluate Drainage Requirements	40 days																	
9	Determine Pavement Restoration Plan	40 days																	
10	Evaluate Street Lighting and Signage	40 days																	
11	Evaluate Historic Retaining Walls	40 days																	
12	Prepare Preliminary Opinion of Probable Cost	30 days																	
13	Develop Preliminary Aesthetic/Enhancement Plan	40 days																	
14	Review and Evaluate Landscaping	40 days																	
15	Develop Gateway Concepts	40 days																	
16	Assess New Trail Access Points and Scenic Overlook Locations	40 days																	
17	Assist in Obtaining Funding for Phase 2 Skyline Drive	256 days																	
18	Prepare Funding Brochure	7 days																	
19	Meeting with SD Congressional Delegation and FHWA in Washington	2 days																	
20	Meeting with SDDOT in Pierre	2 days																	
21	Deliver Request to SD Delegation and FHWA in Washington	2 days																	
22	Prepare Congressional Earmark Questionnaires	5 days																	
23	Rapid City Summit in Washington	2 days																	
24	Congressional / FHWA Follow-Up Meeting in Washington	2 days																	
25	Congressional / FHWA Follow-Up Meeting in Washington	2 days																	
26	Public Involvement	59 days																	
27	Present to Public Works Committee	0 days																	
28	Present to CIP Committee	0 days																	
29	Present to City Council	0 days																	
30	Public Input Meeting	0 days																	

Project: Skyline Drive Schedule\_Phase  
 Date: 11/10/1907

Legend:  
 Progress: [Bar with diagonal lines]  
 Milestone: [Diamond symbol]

Summary: [Bar with diagonal lines]  
 Internal Milestone: [Diamond symbol]

Deadline: [Arrow symbol]

STANLEY CONSULTANTS, INC.

EXHIBIT 2

CITY OF RAPID CITY  
 SKYLINE DRIVE RECONSTRUCTION  
 PHASE 1

TASK	TASK DESCRIPTION	Landscape Architect (Fridell)	Sr. Landscape Architect (Wyss)	Surveyor (Weidensee)	Clerical	TOTAL LABOR
	<b>BILLING RATE (including all mark-</b>	<b>\$ 90.00</b>	<b>\$ 125.00</b>	<b>\$ 75.00</b>	<b>\$ 81.50</b>	
						0
1	PHASE 1 - FUNDING ACQUISITION					0
2						0
3	ADMINISTRATION				2	26
4	PROJECT CONCEPT AND SCOPE MEETING	2	2			28
5	REVIEW BACKGROUND INFORMATION		4	0	2	32
6	EVALUATE SANITARY SEWER REQUIREMENTS					6
7	EVALUATE WATER SUPPLY REQUIREMENTS					6
8	EVALUATE DRAINAGE REQUIREMENTS					4
9	DETERMINE ROADWAY/PAVEMENT IMPROVEMENTS					40
10	REVIEW AND EVALUATE RETAINING WALL					12
11	REVIEW AND EVALUATE LIGHTING					4
12	REVIEW AND EVALUATE SIGNING					6
13	REVIEW AND EVALUATE LANDSCAPING	2	12			16
14	DEVELOP GATEWAY ENTRANCE CONCEPTS	4	8			14
15	DEVELOP PRELIMINARY TRAIL ACCESS/SCENIC LOCA	2	8			12
16	DEVELOP AESTHETIC PLAN	4	12			18
17	PREPARE PRELIMINARY OPINION OF PROBABLE COS	4	8			40
18	DEVELOP CONCEPT STUDY DOCUMENT		0		0	0
19	SUBMITTAL REVIEW MEETINGS	0	0			0
20	RESEARCH AND PRESENT FUNDING OPTIONS					8
21	ASSIST IN OBTAINING OUTSIDE FUNDING					24
22	PRESENTATION TO PUBLIC WORKS COMMITTEE		4			6
23	PRESENTATION TO CITY COUNCIL	2	4			24
24	PRESENTATION TO CIP COMMITTEE		4			6
25	PUBLIC INPUT MEETING	2	4			8
26						0
						0
	TOTAL HOURS	22	70	0	4	340
	SUBTOTAL	1,980	\$ 8,750	\$ -	\$ 326	\$ 40,610
	SUBTOTAL PHASE 1 EXPENSES					\$ 7,140
			TOTAL PHASE 1 FEE			\$ 47,750

STANLEY CONSULTANTS, INC.

CONTRACT NO.

CITY OF RAPID CITY  
 SKYLINE DRIVE RECONSTRUCTION  
 BREAKDOWN OF ESTIMATED DIRECT EXPENSES  
 (Listed by Item at Estimated Actual Cost - NO MARKUP)

PROJECT NO.

New Contract           X            
 Contract Mod.                           

**PHASE 1 - Funding Acquisition**

**REPROGRAPHICS**

	<u># Copies</u>	<u>Sheets per Copy</u>	<u>Cost per 8-1/2 X 11</u>	<u>Cost per 11 X 17</u>	<u>Total</u>
<b>Reports</b>					
Funding Brochure	10	10	\$0.12		\$12.00
<b>Exhibit Boards for Public/City Council Meetings</b>					
Dry Mount	0	20	\$2.50		\$0.00
<b>Color Copies</b>					
Funding Brochure	10	4	\$0.79		\$31.60
Miscellaneous exhibits	1	20	\$0.79		\$15.80
<b>Subtotal Reprographics</b>					<u>\$60.00</u>

**TRAVEL**

	NO.	TRIPS/ DAYS	RATE	
Airfare per Trip (Rapid City)	2	2	\$1,000.00	\$4,000.00
Airfare per Trip (Washington)	1	2	\$400.00	\$800.00
Rental Car per Day	1	6	\$70.00	\$420.00
Miles	0	2	\$0.60	\$0.00
Lodging per Day (Rapid City)	1	4	\$90.00	\$360.00
Lodging per Day (Washington)	1	2	\$150.00	\$300.00
Per Diem	1	6	\$35.00	\$210.00
<b>Subtotal Travel</b>				<u>\$6,090.00</u>

**MISCELLANEOUS SUPPLIES, POSTAGE AND TELEPHONE**

	NO.	RATE	
Wyss Associates Expenses - Reprographics, Exhibits	1	\$500.00	\$500.00
FMG Engineering Expenses	1	\$200.00	\$200.00
Miscellaneous Supplies	1	\$150.00	\$150.00
Long Distance/FAX per Week	20	\$5.00	\$100.00
Shipping per Submittal	2	\$20.00	\$40.00
			<u>\$990.00</u>

**TOTAL PHASE 1 EXPENSES      \$7,140.00**





**Hourly Fees**  
**United States**  
**Office-Based Members**  
 Fiscal Year 2007-2008

Classification	Hourly Rates
SC-1.....	\$33.50
SC-2.....	42.50
SC-3.....	50.75
SC-4.....	58.25
SC-5.....	66.00
SC-6.....	73.50
SC-7.....	81.50
SC-8.....	89.50
SC-9.....	96.75
SC-10.....	104.50
SC-11.....	112.50
SC-12.....	121.00
SC-13.....	130.00
SC-14.....	140.00
SC-15.....	150.00
SC-16.....	162.00
SC-17.....	175.00
SC-18.....	190.00
SC-19.....	205.00
SC-20.....	220.00
SC-21.....	235.00
SC-22.....	257.00

Interest at the rate of 1-1/2% per month will be charged on invoices not paid within 30 days.

These rates are subject to change on or after April 1, 2008.



## 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.** Construction cost means total cost of entire project to CLIENT, except for CONSULTANT's compensation and expenses, cost of land, rights-of-way, legal and accounting services, insurance, financing charges, and other costs which are CLIENT's responsibility as provided in this Agreement.

3.2 **Cost Estimates.** Since CONSULTANT has no control over cost of labor, materials, equipment or services furnished by others, over contractors' methods of determining prices, or over competitive bidding or market

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

### 4. GENERAL

#### 4.1 Termination.

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

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

#### 4.2 Reuse of Documents.

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

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

#### 4.3 Payment.

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

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

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

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

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

**4.5 Successors and Assigns.**

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

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

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

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

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

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

**4.9 Warranty.**

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

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

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

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

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

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

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

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

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

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

**EXHIBIT 4  
SPECIAL PROVISIONS**

The following language supersedes and replaces Section 1.9 in the Standard Terms and Conditions:

1.9 Delete this paragraph in its entirety.

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 second paragraph of this section is deleted in its entirety.

4.12 Delete "\$100,000" and replace with "THE LIMIT OF THE CONSULTANT'S GENERAL LIABILITY INSURANCE".

The following new section is added:

4.15 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.