



PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of June 9, 2008, between CITY OF RAPID CITY, SOUTH DAKOTA (CLIENT) and STANLEY CONSULTANTS, INC. (CONSULTANT). CLIENT intends to perform an evaluation of the Energy Plant (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 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, SOUTH DAKOTA

By: Robert T. Darnell  
Robert T. Darnell, P.E. - Vice President

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

Attest: [Signature]

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

Address for giving notices:  
5775 WAYZATA BOULEVARD, SUITE 300  
MINNEAPOLIS, MN 55416

Address for giving notices:  
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

### 1. BACKGROUND AND OBJECTIVES

The Public Works Department of the City of Rapid City, South Dakota, operates a combined heating and cooling plant that serves the Rushmore Plaza Civic Center and Central High School. The plant also remotely monitors and controls the HVAC systems for both of these buildings and many others totaling over 2.5 million sq ft of public buildings.

Stanley Consultants understands that the City's Public Works Department has requested a thorough evaluation of the Energy Plant. This study will evaluate and report the condition and capacity of the existing plant and distribution systems, forecast future needs, and develop a list of options for plant upgrades or modifications. This study will evaluate the alternatives available and recommend solutions which provide the best long-term value. The study will consider the distribution system and use of the heating and cooling medium at Central High School and Rushmore Plaza Civic Center. The study will also consider the viability and expansion of the Energy Plant's Facility Management System to monitor and control the Energy Plant equipment and the various City and School facilities tied into the FMS.

The ultimate goal of this study is to determine to what extent the City/Rapid City Area Schools should serve as a non-profit district energy supplier in the future, including a review of the rates charged. Many important decisions, with long lasting implications to both parties will result from this study.

### 2. SCOPE OF SERVICES

The following sections describe the scope of services and deliverables for this project that will be provided after receiving notice to proceed.

#### 2.1 Condition Assessment and Evaluation

The first step of the scope includes a condition assessment and evaluation of the operation of the plant. Equipment to be evaluated will include all aspects of the plant including but not limited to boilers, chillers, pumps, cooling towers, fuel supply, and control systems. We will also review the distribution system from the plant to the end users at Central High School and Rushmore Plaza Civic Center. The plant operating parameters and historical load profiles will also be evaluated and documented. Important results from this phase will be to review how the plant calculates and sets billing rates. The methodology of setting billing rates, which incorporate the plant's cost to operate and produce heating water and chilled water (\$/unit of energy), will be reviewed during this evaluation.



The proposed Energy Plant study will include the following major activities:

1. A one-day kickoff meeting will be held to introduce key team members, establish communication, review and discuss plant operating parameters, collect required information (such as contact information for fuel suppliers), examine plant equipment and review operational procedures.
2. Review plant load profiles and load duration curves for hot water and chilled water. Annual load profiles will be used to demonstrate levels of hot water and chilled water production by month. The Energy Plant will need to provide historical data from the energy management system for this effort. Hourly data for one year at a minimum is best for hot water and chilled water production and gas/oil/electric use.
3. Review and document calculations of billing rates relative to cost of operations.
4. Develop a list of energy savings opportunities and/or equipment upgrades to support the existing and projected plant heating/cooling loads. Develop order of magnitude capital cost estimates. Example opportunities include replacement of boilers chillers with higher efficiency equipment, replacement of gas-fired boilers with biomass boilers, revision of existing system operating schemes. Operational changes could include replacing three-way valves with two-way valves and installing VFDs on pumps, raising system delta Ts, chiller plant optimization, among other strategies to maximize the efficiency of the existing equipment without investing in extensive capital equipment. A maximum of four options/opportunities will be evaluated.
5. Review and document use and viability of Facility Management System in the control/monitoring of the Energy Plant equipment and various City and School buildings/facilities.
6. System schematics will be developed for each option in AutoCAD format to represent changes or modifications to the existing systems using the Energy Plant's existing drawings as backgrounds.
7. After the data has been collected and analyzed, Stanley Consultants will issue a draft report summarizing the results of the study. Stanley Consultants will then host a telephone conference call to answer questions and discuss the findings with the City/Rapid City Area Schools and determine which one of the options in item #4 above warrants further detailed economic modeling. The focus of the discussion will center on the economics of the plant operations and the direction that both parties would like to see for the future of the plant.
8. Following this meeting, all mutually agreed upon changes will be incorporated into the final report with the economic modeling step below.



## **2.2 Detailed Economic Model**

A detailed economic model will be performed on the best option from the study to refine the capital cost estimate. A detailed economic model using historical plant monthly data and rate structures would be developed. This phased approach allows the City/Rapid City Area Schools to investigate if an option appears to be attractive before the high cost of design and capital equipment investments are incurred.

## **2.3 Deliverables**

The following deliverables will be provided:

- Attend a one-day kick-off meeting; in attendance will be the project manager, mechanical engineer and electrical engineer.
- Obtain and review site load profiles and load duration curves for hot water and chilled water production; obtain and document gas, oil, and electricity consumption data.
- Review the configuration and capability of the Energy Plant's Facility Management System to control the plant upgrades and the associated equipment in the Civic Center and Central High School. The demands made by various City and School facilities tied into the Facility Management System will be considered.
- Develop a list of no more than four options for major plant upgrades and associated order of magnitude capital equipment costs.
- Develop draft report of study and host a telephone conference call review meeting for the draft report.
- Develop detailed economic model of one selected option. Refine cost estimates to include detailed labor and equipment costs. Develop incremental O&M costs, capital costs, and determine Net Present Value, Internal Rate of Return, and simple payback calculations.
- Issue six copies of spiral bound draft report highlighting detailed economic model.
- Host a telephone conference call to discuss the draft letter report and detailed model.
- Issue six copies of the final letter report and economic model, incorporating comments from the draft report review meetings.

## **2.4 Communication and Coordination**

An essential key to project success is communication and coordination among all members of the project team. Throughout the project, Stanley Consultants will maintain close contact with the City of Rapid City, SD, Rapid City Area Schools and the Energy Plant to verify the goals and objectives are being met and keep everyone informed of project progress. Coordination will be maintained via telephone, fax, and written correspondence.



### 2.5 Assumptions and Clarifications

- Stanley Consultants assumes that the Energy Plant will provide historical operating data from the existing energy management system for the heating water and cooling loads. The Energy Plant will provide historical gas, oil, and electric consumption data.
- Stanley Consultants has not included fees for evaluation of the Energy Plant's operations and monitoring of HVAC systems for buildings other than the Energy Plant, Central High School, and Rushmore Plaza Civic Center.
- Stanley Consultants has assumed the Energy Plant will provide hard copy or electronic accurate Record Drawings of the existing plant systems for use during the project. Copies of existing drawings will be made and originals returned immediately to the Energy Plant. Stanley Consultants has not included fees for creating new AutoCAD drawings of the existing plant systems.

### 3. SCHEDULE

Activity	Date
Notice to Proceed – Base Scope	Date TBD
Kick-off Meeting	One week after NTP
Submit Draft Report for Review	4 weeks after Meeting
Draft Report Review Meeting	1 week after submittal
Submit Final Report	1 week after Meeting
Alternate #1 – Notice To Proceed	1 week after Final Report
Alternate #1 – Submit Draft Economic Model	3 weeks after NTP
Alternate #1 – Draft Review Meeting	1 week after submittal
Alternate #1 – Submit Final Economic Model	1 week after Meeting



## Exhibit 2 – Compensation

Stanley Consultants, Inc. will perform the Scope of Services described in this proposal for a lump sum fee of \$59,645 (Fifty-Nine Thousand Six Hundred Forty Five Dollars), including estimated reimbursable expenses of \$3,720 (Three Thousand Seven Hundred Twenty Dollars). Detailed fee breakdowns are provided below. This offer expires July 1, 2008. Stanley Consultants will invoice monthly.

### Fee Breakdown

Labor	\$55,925
<u>Estimated Reimbursable Expenses</u>	<u>\$3,720</u>
<b>Total</b>	<b>\$59,645</b>

### Base Scope Hourly Breakdown

Engineering	184
Graphics	24
Economics	88
Cost Estimating	32
<u>Project Management/Administration</u>	<u>64</u>
<b>Total Hours</b>	<b>392</b>



## 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 (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUBCONSULTANTS), 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 PERFORMANCE OF SERVICES UNDER 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 section in its entirety.

The following language supersedes and replaces Section 4.3.2 in the Standard Terms and Conditions:

4.3.2 Delete "after receipt of statement, interest at maximum legal rate or at a rate of 18%, whichever is less, shall accrue; and, in addition" from this paragraph.

The following language supersedes and replaces Section 4.4 in the Standard Terms and Conditions in its entirety:

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.

The following language supersedes and replaces Section 4.11 in the Standard Terms and Conditions:

4.11 Delete "and Section 4.12, Limitation of Liability" from the last sentence of the first paragraph of this section.

4.11 Delete the second sentence of the second paragraph of this section in its entirety.

The following language supersedes and replaces Section 4.12 in the Standard Terms and Conditions

4.12 Delete this section in its entirety..

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.