

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

October 7, 2004

Project Name & Number: Engineering Services for Preliminary Study and Computer Modeling Reroute/Replace 10" and 12" Water mains on Camp Rapid South Canyon High level Water Service Area Rapid City, SD, Project No.: W04 - 1428. **CIP #:** 50571 **Project #:** 1428

Project Description: Engineering Services to determine reroute of 10" and 12" water mains at Camp Rapid. Work items consist of water modeling and preparation of a study report. The Guard will reimburse the City for 1/3 of the Engineering Costs.

Consultant: FMG, Inc.

Original Contract Amount: \$11,850

Original Completion Date: 1/31/05 (see contract)

Amendment Number:

Amendment Description:

Current Contract Amount:	\$11,850.00	Current Completion Date:	January 31, 2005
Change Requested:			
New Contract Amount:	\$11,850.00	New Completion Date:	

Funding Source This Request:

Amount	Dept.	Line Item	Comments
\$7,900.00	933	4223	Engineering Services for Water Enterprise Fund
\$3,950.00	933	4223	Engineering Services reimbursed by the National Guard
\$11,850.00	Total		

Agreement Review & Approvals

Project Manager	Date	Division Manager	Date
Department Director	Date	City Attorney	Date

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
for ENGINEERING SERVICES**

This AGREEMENT is made this 3RD day of September 2004 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 project described as:

**Preliminary Study and Computer Modeling
Reroute/Replace 10" & 12" Water Mains on Camp Rapid
South Canyon High Level Water Service Area
Rapid City, SD**

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: 

Allen D. Foster, P. E.

Title: President

Date: 9/3/04

STAFF CONCURRENCE

 10/7/04

PROJECT MANAGER.

ARTICLE I - PROJECT PROVISIONS

A. PROJECT DESCRIPTION

See Proposal dated July 21, 2004 attached hereto.

B. SCOPE OF SERVICES

See Proposal dated July 21, 2004 attached hereto.

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. Total compensation, as outlined in the Estimated Manhours and Fees, Preliminary Study and Computer Modeling, South Canyon Water System Analysis, Reroute 10" & 12" Mains at Camp Rapid dated July 21, 2004 attached hereto, will not exceed \$11,850.00 without prior written approval of Client. The services will be billed on a unit-cost basis. The unit costs are considered fixed; however, the total will vary depending on the actual work project requirements and anticipated general conditions.

1.2 For additional services rendered pursuant to Article II, Section 7.0, Client will pay Consultant on the basis hourly rates set forth in the Estimated Manhours and Fees, Preliminary Study and Computer Modeling, South Canyon Water System Analysis, Reroute 10" & 12" Mains at Camp Rapid attached hereto.

D. BILLING RATES

As shown in the Estimated Manhours and Fees, Preliminary Study and Computer Modeling, South Canyon Water System Analysis, Reroute 10" & 12" Mains at Camp Rapid attached hereto.

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 Study including extra work and extensions thereto.

1.2 Consultant's services for the work included herein shall be completed by January 31, 2005.

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, superintendance, 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. Certificates for all such policies of insurance shall be provided to the Client upon request in writing.

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.



FMG. INC. 3700 Sturgis Road, Rapid City, South Dakota 57702-0317 605/342-4105
FAX 605/342-4222

July 21, 2004

Stacey Titus, P.E.
Engineering Project Manager
City of Rapid City
300 6TH Street
Rapid City, SD 57701

**RE: PRELIMINARY STUDY AND COMPUTER MODELING
REROUTE/REPLACE 10" AND 12" WATER MAINS ON CAMP RAPID
SOUTH CANYON HIGH LEVEL WATER SERVICE AREA**

Dear Stacey:

Per your recent request, we are pleased to submit this proposal for the referenced project.

The project is to provide guidance for relocation/replacement of the existing 10" and 12" water main crossing Camp Rapid. These water mains are a part of the City's South Canyon High Level Water Service area. We will evaluate various alternates including pipe sizes, routes and construction sequencing of the relocation/replacement of the existing water main.

A computer model (Watercad) of portions of the South Canyon High Level Service area system will be developed for the evaluation. The computer modeling will be completed utilizing the City base map, new ortho photography and new aerial topographic maps. We do not anticipate any field surveying and have assumed that the City will furnish the ortho photos and topographic maps. Previous studies including the 1985 Municipal Water System report prepared by Francis-Meador-Gellhaus and Preliminary Design report for West Chicago Street Reconstruction prepared by Cetec Engineering Services in 2001 will be reviewed and used to develop peak flows within the system for modeling purposes.

Estimated fees for the project are shown on the attached sheet, Estimated Man-hours and Fees, Preliminary Study and Computer Modeling, South Canyon Water System Analysis, July 21, 2004.

I will be available at your convenience to discuss this proposal.

If you have any questions or need additional information, please contact me. *Thank you for the opportunity to submit this proposal.*

Sincerely,

FMG. Inc.

Allen D. Foster, P.E.

Enclosures

c: Proposal File

**ESTIMATED MAN-HOURS AND FEES
 PRELIMINARY STUDY AND COMPUTER MODELING
 SOUTH CANYON WATER SYSTEM ANALYSIS
 REROUTE 10" & 12" MAINS AT CAMP RAPID
 FMG, INC.**

July 21, 2004

	PR/PE	PE	CADD	SC	CLER
Water System Computer Modeling					
Collect and Review Existing Data and Reports	2	4			
Prepare Base Mapping, Ortho Photography and Contours		4	12		
Base Map Water System Layout		2	12		
Water Use Review & Projections	4	8			
Set Computer Model Pipes, Nodes, Tanks and Pumps	4	24			
System Evaluation and Alternates	12	28			
Alternate Cost Estimates	2	12			
Meetings/Coordination	4	4			
Report Preparation	16	8	10		4
TOTAL ESTIMATED HOURS	42	90	34	0	4

ESTIMATED FEES

	HOURS	RATE/HR	TOTAL
PR/PE - PRINCIPAL/PROFESSIONAL ENGINEER	42	\$90.00	\$ 3,780.00
PE - DESIGN ENGINEER/PROFESSIONAL ENGINEER	90	\$70.00	\$ 6,300.00
CADD - COMPUTER DRAFTING OPERATOR	34	\$45.00	\$ 1,530.00
SC - SURVEY CREW	0	\$75.00	\$ -
CLER - CLERICAL	4	\$35.00	\$ 140.00
Printing, Mileage, Misc.			\$ 100.00
TOTAL ESTIMATED ENGINEERING FEES			\$ 11,850.00