

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

PW123008-09

Date: 12/16/08

Project Name & Number: ST09-1759 Elm Ave Phase 3
ST10-1777 Elm Ave Phase 4

CIP #: 50130
50643

Project Description: Preliminary and Final Engineering for Reconstruction of Elm Ave from just North of Tallent Street to Oakland Street (phase 3) and from Oakland Street to Utah Street (phase 4).

Consultant: FMG

Original Contract Amount: \$156,790.00

Original Contract Date:

Original Completion Date:

Addendum No:

Amendment Description:

Current Contract Amount: _____
Change Requested: _____
New Contract Amount: _____ \$0.00

Current Completion Date: _____
New Completion Date: _____

Funding Source This Request:

Amount	Dept.	Line Item	Fund	Comments
\$16,000.00	833	4380	604	Sewer
\$16,000.00	933	4381	602	Water
\$89,790.00	8910	4370	505	Streets
\$35,000.00	8911	4371	505	Drainage
\$156,790.00	Total	4223		

Agreement Review & Approvals

<p><i>Todd Fisher</i> _____ Project Manager Date: 12/17/08</p>	<p><i>Bill Kim</i> _____ Division Manager Date: 12-17-08</p>
<p><i>[Signature]</i> _____ Department Director Date: 12-17-08</p>	<p><i>[Signature]</i> _____ City Attorney Date: 12-18-08</p>

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	12/19/08	[Signature]	(Y)	N
Cash Flow			Y	N

**PROFESSIONAL SERVICES AGREEMENT
for ENGINEERING SERVICES**

This AGREEMENT is made this _____ 2008 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:

ELM AVENUE RECONSTRUCTION, PHASE 3 AND PHASE 4
Phase 3 – Project No. ST09-1759 CIP No. 50130
Phase 4 – Project No. ST10-1777 CIP No. 50643

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: 12/17/08

ARTICLE I - PROJECT PROVISIONS

A. PROJECT DESCRIPTION

The project is for engineering design and bidding services related to the reconstruction Elm Avenue. The project will be designed and bid in two separate phases. **Phase 3** of the Elm Avenue reconstruction project is from the south end of the Meade Street Reconstruction Phase 2 project about ½ block south of East Meade Street to a point north of East Oakland Street; a total length of about 1,100 feet. **Phase 4** of the Elm Avenue reconstruction project is from the end of the Phase 3 project to the south side of East Utah Street; a total length of about 1,450 feet.

The project includes roadway design, grading, curb and gutter, surfacing, water main reconstruction, sanitary sewer reconstruction, drainage improvements, sidewalk, bike path, lighting (to be determined during Task 2 services and public meetings) and geotechnical evaluation. It is anticipated that the Phase 3 project will be constructed in 2009. Phase 4 design will be completed during construction of the Phase 3 project and constructed in 2010, budget permitting.

B. SCOPE OF SERVICES

The anticipated services for this project include the (1)Preliminary Design Services (2) Final Design Services and (3)Bidding Services. The tasks to complete the project requirements are generally described below.

TASK 1 - PRELIMINARY DESIGN SERVICES:

This task consists of all services necessary to take the project from beginning through the Preliminary Design submittal stage, and may include the following itemized services.

- 1.1 Kick-off Conference: The consultant shall meet with City staff to detail project concept and scope. The consultant shall prepare an agenda, take minutes, and distribute minutes.
- 1.2 Review background information listed in this RFP, and any other resources as necessary.
- 1.3 Prepare Project Design Report: The consultant shall establish and indicate project specific design criteria and standards within the Project Design Report. The project design report will be revised and updated including revised storm drainage report for Elm Avenue using the draft Drainage Criteria Manual. The preliminary design revision and updated design report will include an evaluation of roadway lighting: decorative lighting, standard lighting or Black Hills Power lighting.

The consultant shall submit design assumptions, design life, design criteria, and reference of design resources, preliminary horizontal and vertical alignment for utilities, roadways, and other public improvements. Establish pipe sizes, lane configurations. Provide justification for the facility and analysis of alternatives. The project's geotechnical report shall be included within the Project Design Report. Submit three (3) copies of the Project Design Report and preliminary plans and specifications to City of Rapid City's project manager for review and comment.

- 1.4 A traffic study and draft report has been completed but will need to be finalized. FMG personnel met with City personnel on June 14, 2006 to review the draft traffic report. A scroll with curb and gutter and lane layout reflecting discussions at the meeting was then submitted. At the review

meeting, it was agreed that the proposed project would include reconstruction with one traffic lane in each direction with a center turn lane and no parking allowed on either side. A public open house meeting on October 24, 2006. The public open house included presentation of the preferred option of one traffic lane in each direction, a center turn lane and no parking on either side. Turning lanes would be provided at Indiana Street and St. Patrick Street. As a part of this contract, the preliminary design update, the number of lanes and parking, will be addressed at an open house meeting, the traffic study will be finalized and possible bus stop turn-outs addressed again.

- 1.5 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. FMG has previously completed the route survey under the original contract, but will be updated as needed to reflect changed conditions.
- 1.6 Identify right-of-way (ROW) and easement acquisition needs. Include size and extent of such ROW and easements and contact information of property owners.
- 1.7 Prepare preliminary opinion of probable construction costs for the project.
- 1.8 Recommend location and extent of geotechnical services investigations necessary to complete design.
- 1.9 Prepare preliminary plan and profile sheets including locations of existing and new utilities and street alignment. Show existing utilities locations with probable depths. The preliminary plan and profile sheets will be revised to reflect the draft drainage criteria manual and revised/updated project design report.
- 1.10 Attend submittal review meeting with City staff, if necessary.
- 1.11 Attend Public Works and Council meetings as necessary.
- 1.12 Develop and distribute a survey questionnaire to property owners adjacent to the proposed construction areas. The questionnaire will be developed to obtain information on site-specific concerns such as landscaping or irrigation systems, service line locations, special needs such as access considerations during construction, or history of utility or infrastructure problems at the property. The questionnaire will also request property owner's opinions on on-street parking and roadway lighting. Self addressed and stamped envelopes will be inculed with the questionnaire mailing. Questionnaires would be returned to and evaluated by the Consultant, who would follow up with appropriate individual contact with property owners prior to 100% plans and contract documents to review project considerations that me be addressed or mitigated by the project work.
- 1.13 Arrange and conduct a public open house with affected residents. The open house shall be held during the preliminary design update such that public comments and concerns may still be addressed within the final project documents. Notice of the open house shall be mailed to all property owners adjacent to the proposed work area(s), as well as those in the immediate area who may be directly impacted by the construction, as determined by the City.
- 1.14 Meet with individual property owners regarding ROW and easement needs and regarding specific project issues and components.

TASK 2 - FINAL DESIGN SERVICES:

This task consists of all services necessary to take project from Task 1 Preliminary Design Services through the Final Design Services, and may include the following itemized services.

- 2.1 Address City comments from the Task 1 City review(s) and finalize Project Design Report,
- 2.2 Assist the City with easement(s) acquisition, and obtain property owner contact information, prepare easement and ROW exhibits as necessary, conduct property owner meetings for easement and ROW acquisition, and document acquisition meetings.
- 2.3 Determine removal limits with approval of City of Rapid City representative.
- 2.4 Coordinate with the geotechnical engineer to complete these services, and provide a geotechnical report to be included in the Project Design Report and project plans or specifications,
- 2.5 Incorporate ADA compliance items, for example fillet, driveway and sidewalk improvements,
- 2.6 Incorporate Erosion and Sediment Control items.
- 2.7 Provide Erosion Control and Sediment Control Plans.
- 2.8 Complete the, "Flood Management Project Water Quality Impact Assessment Checklist Form", attachment three and incorporate applicable measures within the construction documents as necessary.
- 2.9 Provide three (3) copies of the finalized Project Design Report.
- 2.10 Provide three (3) copies of the Final Design Services submittal. The submittal shall consist of complete plans, specifications, contract documents, and opinion of probable construction cost to the City of Rapid City's project manager for review. The Final Design Services submittal will be made to the City when the consultant believes the plans, specifications, contract documents, and opinion of probable construction cost are 100% complete. Other iterim submittals will include the Revised Preliminary Design, 65% design and 95% designm.
- 2.11 Address 100% submittal staff comments as necessary.
- 2.12 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.
- 2.13 Plans documents shall adhere to current City of Rapid City guidelines.
- 2.14 Staking information shall include either of the following formats:
 - On the Plans
 - Station offsets for all items of work requiring field staking.
 - In tabular form on a plan sheet (schedule)
 - Coordinates and description of inter-visible control points.
 - Coordinates of all items of work requiring field staking.
 - Benchmark information shall be provided on each sheet.

- 2.15 Provide project layout to include lot lines (front and side) and addresses of all properties (adjacent to construction, or alternatively, in service area).
- 2.16 Provide conceptual traffic control plan showing all streets and alleys that may be impacted by the construction of the project. Show all existing signage, pavement markings, etc. All work zones, road closures, lane closures, and pavement marking removal shall be indicated on the plan. Traffic control plans shall indicate suggested sequence, intent and general guidelines, but does not require identification or placement of project specific traffic control items. The City will provide and electronic version of an aerial photo for the consultant's use.
- 2.17 Coordinate directly with utility companies' engineering divisions to ensure that all existing utilities are completely and accurately identified and 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. Preliminary plans shall be provided to the pertinent utilities for comment at the time they are complete. During design, a meeting will be held at City hall and all private utilities invited to review the project and their specific utility.
- 2.18 If desiring exceptions from City requirements or specifications, it is the Consultant's responsibility to request and secure exceptions. Failure by the City to comment on a nonconforming item during a review does not constitute the granting of an exception.
- 2.19 Provide detailed specifications supplementing the City of Rapid City Standard Specifications, as necessary. Typically project drawing specific issues should be indicated as a General Note on the drawings. Material types and material specific items would be included as a detailed specification.
- 2.20 Prepare any and all permits with exhibits required for the City.
- 2.21 Identify permits that will be required for the Contractor.
- 2.22 Prepare final "Engineer's Estimate" of probable construction cost for the project.
- 2.23 Deliver the following:
- Provide five (5) copies of bid documents including complete plans, specifications, contract documents, and Engineer's Estimate of probable construction cost to the City of Rapid City's project manager for City distribution.
 - Provide complete plans on CD compatible with AutoCAD Release 2006 format.
 - Provide all topographic, control, and design points in the .dwg file and in tabular format, both on CD and on hard copy printout.
 - Provide complete specifications and contract documents on CD in Microsoft Word XP or previous versions.
 - Provide a unit price cost estimate on CD in Microsoft Excel XP or previous version on the City of Rapid City "Engineer's Estimate" form.
 - Provide Engineer's Estimate of probable construction costs as a component of this submittal.
- 2.24 All submittals (drawings and specifications) believed by the Engineer of Record to be a final, shall contain a Certification Statement of Conformance with City Standards which shall read, "I (insert Engineer of Record's name) Certify that I have read and understand the provisions contained in the City of Rapid City Standard Specifications for Public Works Construction, current edition and the

City of Rapid City's adopted Design Criteria Manuals. The drawings and specifications contained here within, to the best of my knowledge, were prepared in accordance with these documents or a properly executed exception to the Standard Specifications and/or Infrastructure Design Criteria Manual has been secured". This statement shall appear on the title sheet of the drawings and on the first page of specifications after the cover sheet. The "Certification Statement of Conformance with City Specifications" shall be signed and dated by the Engineer of Record.

- 2.25 If needed, the Consultant shall submit plans and specifications to the Department of Environment and Natural Resources for approval, and shall address any comments or corrections required.

TASK 3 – BIDDING SERVICES:

This task consists of all services necessary for the administration of the Bidding Services of the project, and may include the following itemized services.

- 3.1 Submit sufficient information to the City of Rapid City project manager for completion of City Advertising Authority form.
- 3.2 Print and issue plans and specifications to bidders, and five (5) copies to the City of Rapid City, refer to "Deliverable" above in Task 2. Maintain a plan holders list.
- 3.3 Print and distribute five (5) copies plans/ drawings to the City of Rapid City at 11" x 17" scale for construction services personnel.
- 3.4 Arrange and conduct a Pre-bid Conference. Record attendance and minutes. Distribute copies to all attendees.
- 3.5 Issue addenda to the bid documents as required.
- 3.6 Attend the bid opening (to be held at the City Finance Office).
- 3.7 Attend Public Works Committee and Council Meetings as required.
- 3.8 Prepare the Bid Tab in City of Rapid City Microsoft Excel project book format and submit electronic Bid Tab and a printed hard copy to Engineering Services within one (1) working day of the bid opening. Forward a copy of the final bid tab to all bidders and project manager.
- 3.9 Present award recommendation to City of Rapid City project manager.
- 3.10 Prepare Notice of Award letter for City of Rapid City project manager signature and distribution to contractor for execution.
- 3.11 Prepare contracts and submit to contractor for execution.
- 3.12 Review construction documents and other submittals from the contractor and submit to City of Rapid City project manager for distribution to City Attorney for approval and signatures of Mayor and Finance Officer.

Construction period services are not included in this contract.

It is understood that the City may negotiate a construction period services contract with FMG, Inc.

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.

Phase 3 Project	\$81,465.00
Phase 4 Project	\$75,325.00
TOTAL	\$156,790.00

Total project fees will not exceed the estimated fee without justification from the Consultant and prior approval of the City of Rapid City.

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

D. BILLING RATES

The services will be billed at the Consultant's standard hourly rates. The estimated man-hours and hourly rates are shown on the "Elm Avenue Reconstruction-Phase 3, Estimated Man-Hours and Fees dated November 11, 2008, Revised December 15, 2008 and Elm Avenue Reconstruction-Phase 4, Estimated Man-Hours and Fees dated November 11, 2008, Revised December 15, 2008 both of which are 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 project including extra work and extensions thereto.

- 1.2 Consultant's services shall be in accordance with the schedule set forth below:

Phase 3 Project Final Plans, Specifications and Contract Documents anticipating a bid opening on June 9, 2009 with the Notice to Proceed with project design on January 6, 2009. Interim submittal schedules for the Revised Preliminary Design Report, 65% design, and 95% design will be established and agreed upon with the City's Project Manager after the open house.

Phase 4 Project Final Plans, Specifications and Contract Documents anticipating a bid opening in February, 2010. Interim submittal schedules for the 65% design, and 95% design will be established and agreed upon with the City's Project Manager.

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. 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.

FMG, INC.
 ELM AVENUE RECONSTRUCTION - PHASE 3
 SOUTH OF E. MEADE STREET TO NORTH OF E. OAKLAND STREET
 Project No.
 Utility No.
 ESTIMATED MAN-HOURS AND FEES
 11/11/2008, Revised 12/15/2008

Roadway Design, Grading, Curb and Gutter, Surfacing,
 Drainage, Water and Sewer

FMG CIVIL ENGINEERING MANHOURS	PE/PR	PE/Senior	CADD	SC	RLS	CL	SMS/PR	ST
MANHOUR RATES	\$	\$	\$	\$	\$	\$	\$	\$
INVESTIGATIVE SERVICES								
Task 1.1								
1.1.1 Update Route survey	115.00	90.00	8	16	2			45.00
1.1.2 Survey Research & Utility Coord					2			
1.1.3 Field Check		2						
1.1.4 Verify Service Line Location w/cards		2						
SUBTOTAL FMG HOURS	0	4	8	16	4	0	0	0
FMG MANHOUR COSTS	\$ -	\$ 360.00	\$ 440.00	\$ 1,680.00	\$ 300.00	\$ -	\$ -	\$ -
TASK 1.1 - FMG CIVIL ENG MANHOUR COST	\$ 2,780.00							
TASK 1.1 - EXPENDABLES AND MILEAGE	\$ 100.00							
TOTAL COST OF TASK 1.1	\$ 2,880.00							

REVISIONS FOR PROGRAMMING/SCHEMATIC DESIGNS	PE/PR	PE/Senior	CADD	SC	RLS	CL	SMS/PR	ST
MANHOUR RATES	\$	\$	\$	\$	\$	\$	\$	\$
Task 1.2								
1.2.1 Kickoff/Programming Meeting and Minutes	2	3						
1.2.2 Develop and Distribute Questionnaire	2	8	2			2		
1.2.3 Compile and analyze Results of Questionnaire	2	8						
1.2.4 Update Preliminary Plan Sheets/Traffic Lanes		16	12					
1.2.5 Public Open House Meeting	4	4	1					
1.2.6 Coordinate with Roadway Lighting Consultant		2						
1.2.7 Coordinate with Traffic Consultant	2	6						
1.2.8 Prepare Schematic Design Report	4	16	8			2		
1.2.9 Review Meetings/Coordination	2	4						
1.2.10 Public Works/Council Meetings	2	2						
SUBTOTAL FMG HOURS	20	69	23	0	0	4	0	0
FMG MANHOUR COSTS	\$ 2,300.00	\$ 6,210.00	\$ 1,265.00	\$ -	\$ -	\$ 180.00	\$ -	\$ -
TASK 1.2 - FMG CIVIL ENG MANHOUR COST	\$ 9,955.00							
TASK 1.2 - ELECTRICAL CONSULTANT	\$ 2,685.00							
TASK 1.2 - TRAFFIC CONSULTANT	\$ 4,100.00							
TASK 1.2 - EXPENDABLES AND MILEAGE	\$ 400.00							
TOTAL COST OF TASK 1.2	\$ 17,140.00							

FMG, INC.
ELM AVENUE RECONSTRUCTION - PHASE 3
SOUTH OF E. MEADE STREET TO NORTH OF E. OAKLAND STREET
 Project No.
 Utility No.
ESTIMATED MAN-HOURS AND FEES
 1/1/2008, Revised 12/15/2008

Roadway Design, Grading, Curb and Gutter, Surfacing,
 Drainage, Water and Sewer

FMG CIVIL ENGINEERING MANHOURS		PE/PR	PE/Senior	CADD	SC	RLS	CL	SMS/PR	ST
MANHOURLY RATES		\$	\$	\$	\$	\$	\$	\$	\$
Task 2.1	65% DESIGN AND PLAN PREPARATION								
2.1.1	Demolition/Take Out Plan Sheets (2 Sheets)		2	8					
2.1.2	Plan & Profile -Main Line (2 Sheets each)		20	28					
2.1.3	Plan & Profile-Intersecting Streets (2 Sheets)	1	12	16					
2.1.4	Plan & Profile-Main Line Utilities	1	12	20					
2.1.5	Plan & Profile-Intersecting Streets Utilities (2 Sheets)	1	6	10					
2.1.6	Curb and Gutter, Pavement and Joint Layout (2 Sheets)	1	12	12					
2.1.7	Pavement Markings & Signage (1 Sheet)		4	6					
2.1.8	Typical Street Sections		2	4					
2.1.9	Storm Sewers & Inlets Design	1	8	12					
2.1.10	Cross Sections (5 Sheets)		4	12					
2.1.11	Construction Limits/ROW Needs		2	2					
2.1.12	Private Utility Meeting and Coordination		4						
2.1.13	Plans Title Sheet			2					
2.1.14	Construction Sequencing	1	4						
2.1.15	Temporary Traffic Control/Detours	1	4	4					
2.1.16	Storm Water Pollution Protection Plan	2	8	4					
2.1.17	Flood Project Management Water Quality Impact Assessment	2	4						
2.1.18	General Notes	2	8	6					
2.1.19	Estimate of Quantities		12	4					
2.1.20	Opinion of Probable Cost	2	6						
2.1.21	Preliminary Design Report	6	12						
2.1.22	Meetings w/ Engineering, Utility Maintenance, Private Utilities	8	8						
	SUBTOTAL FMG HOURS	29	154	150	0	0	0	0	0
	FMG MANHOUR COSTS	\$ 3,335.00	\$ 13,860.00	\$ 8,250.00	\$ -	\$ -	\$ -	\$ -	\$ -
	TASK 2.1 - FMG CIVIL ENG MANHOUR COST	\$ 25,445.00							
	TASK 2.1 - ELECTRICAL ENGINEERING	\$ 2,520.00							
	TASK 2.1- EXPENDABLES AND MILEAGE	\$ 250.00							
	TOTAL COST OF TASK 2.1	\$ 28,215.00							

FMG, INC.
ELM AVENUE RECONSTRUCTION - PHASE 3
SOUTH OF E. MEADE STREET TO NORTH OF E. OAKLAND STREET
 Project No.
 Utility No.
ESTIMATED MAN-HOURS AND FEES
 11/1/2008, Revised 12/15/2008

Roadway Design, Grading, Curb and Gutter, Surfacing,
 Drainage, Water and Sewer

FMG CIVIL ENGINEERING MANHOURS		PE/PR	PE/Senior	CADD	SC	RLS.	CL	SMS/PR	ST
MANHOUR RATES		\$ 115.00	\$ 90.00	\$ 55.00	\$ 105.00	\$ 75.00	\$ 45.00	\$ 100.00	\$ 45.00
Task 2.2	95% DESIGN AND PLAN PREPARATION								
2.2.1	Demolition/Take Out Plan Sheets (2 Sheets)		2	4					
2.2.2	Plan & Profile -Main Line (2 Sheets each)		16	24					
2.2.3	Plan & Profile-Intersecting Streets (2 Sheet each)		4	8					
2.2.4	Plan & Profile-Main Line Utilities	1	8	16					
2.2.5	Plan & Profile-Intersecting Streets Utilities (2 Sheet each)	1	4	8					
2.2.6	Curb and Gutter, Pavement and Joint Layout (2 Sheets)		8	8					
2.2.7	Pavement Markings & Signage (1 Sheets)		2	2					
2.2.8	Typical Street Sections		1	2					
2.2.9	Storm Sewers & Inlets Design	1	8	12					
2.2.10	Cross Sections (5 Sheets)		4	10					
2.2.11	Construction Limits/ROW Needs		1	2					
2.2.12	Private Utility Coordination		2						
2.2.13	Plans Title Sheet			1					
2.2.14	Details and City Standard Detail Sheets		4	6					
2.2.15	Property Control Drawings		1	4					
2.2.16	Horizontal/Vertical Control/Alignment Data		1	2		2			
2.2.17	Construction Sequencing	1	2	2					
2.2.18	Temporary Traffic Control/Detours	1	2	4					
2.2.19	Storm Water Pollution Protection Plan		2	2					
2.1.20	General Notes	1	6	6					
2.2.21	Estimate of Quantities		12	4					
2.2.22	Pipe Tables		6	4					
2.2.23	Tables Regarding Quantities (1 Sheets)		2	6					
2.2.24	Right of way Table		1	2		2			
2.2.25	Assistance in Right of Way Negotiations		12						
2.2.26	Prepare Bid Documents and Specifications	10							
2.2.27	Reviews/Coordination	8	8						
	SUBTOTAL FMG HOURS	24	119	139	0	4	0	0	0
	FMG MANHOUR COSTS	\$ 2,760.00	\$ 10,710.00	\$ 7,645.00	\$ -	\$ 300.00	\$ -	\$ -	\$ -
	TASK 2.2 - FMG CIVIL ENG MANHOUR COST	\$ 21,415.00							
	TASK 2.2 - ELECTRICAL ENGINEERING	\$ 1,025.00							
	TASK 2.2 - EXPENDABLES AND MILEAGE	\$ 300.00							
	TOTAL COST OF TASK 2.2	\$ 22,740.00							

FMG, INC.
 ELM AVENUE RECONSTRUCTION - PHASE 3
 SOUTH OF E. MEADE STREET TO NORTH OF E. OAKLAND STREET
 Project No.
 Utility No.
 ESTIMATED MAN-HOURS AND FEES
 1/11/2008, Revised 12/15/2008

Roadway Design, Grading, Curb and Gutter, Surfacing,
 Drainage, Water and Sewer

FMG CIVIL ENGINEERING MANHOURS	PE/PR	PE/Senior	CADD	SC	RLS	CL	SMS/PR	ST
MANHOUR RATES	\$ 115.00	\$ 90.00	\$ 55.00	\$ 105.00	\$ 75.00	\$ 45.00	\$ 100.00	\$ 45.00
TASK 2.3 100% DESIGN AND PLAN PREPARATION								
Final Revisions and Plotting	4	28	40					
SUBTOTAL FMG HOURS	4	28	40	0	0	0	0	0
FMG MANHOUR COSTS	\$ 460.00	\$ 2,520.00	\$ 2,200.00	\$ -	\$ -	\$ -	\$ -	\$ -
TASK 2.3 - FMG CIVIL ENG MANHOUR COST	\$ 5,180.00							
TASK 2.3 - ELECTRICAL ENGINEERING	\$ 325.00							
TOTAL COST OF TASK 2.3	\$ 5,505.00							

TASK 3.1 - BIDDING PERIOD SERVICES	PE/PR	PE/Senior	CADD	SC	RLS	CL	SMS/PR	ST
Issue Plans and Specifications to Bidders		2				2		
Plans and Specifications Interpretation	1	2						
Prepare and Issue Addenda		2	2			2		
Prebid Meeting		2						
Bid Opening, Bid Tabulation, Award Recommendation	1	6						
Attend Public Works Meeting if Required		2				2		
Prepare Notice of Award Letter		1						
Prepare Contracts and Submit to Contractor		2						
Review Construction Documents/Submit to City		2						
SUBTOTAL FMG HOURS	2	21	2	0	0	6	0	0
FMG MANHOUR COSTS	\$ 230.00	\$ 1,890.00	\$ 110.00	\$ -	\$ -	\$ 270.00	\$ -	\$ -
TASK 3.1 FMG CIVIL ENG MANHOUR COST	\$ 2,500.00							
TASK 3.1 - ELECTRICAL ENGINEERING	\$ 585.00							
TASK 3.1 - PRINTING	\$ 1,900.00							
TOTAL COST OF TASK 3.1	\$ 4,985.00							

Printing Costs assume 30 sets of plans and specs at \$60/set + \$100 shipping

TASK 4 - CONSTRUCTION PERIOD SERVICES	PE/PR	PE/Senior	CADD	SC	RLS	CL	SMS/PR	ST
NOT INCLUDED								
SUBTOTAL FMG HOURS	0	0	0	0	0	0	0	0
FMG MANHOUR COSTS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TASK 4 - FMG CIVIL ENG MANHOUR COST	\$ -							
TASK 4 - ELECTRICAL ENGINEERING	\$ -							
TASK 4 - MILEAGE AND EXPENDABLES	\$ -							
TOTAL COST OF TASK 4	\$ -							
TOTAL OF TASKS 1 - 4	\$ 81,465.00							

FMG, INC.
ELM AVENUE RECONSTRUCTION - PHASE 3
SOUTH OF E. MEADE STREET TO NORTH OF E. OAKLAND STREET
 Project No.
 Utility No.
ESTIMATED MAN-HOURS AND FEES
 11/11/2008, Revised 12/15/2008

Roadway Design, Grading, Curb and Gutter, Surfacing,
 Drainage, Water and Sewer

FMG CIVIL ENGINEERING MANHOURS	PE/PR	PE/Senior	CADD	SC	RLS	CL	SMS/PR	ST
MANHOURLY RATES	\$ 115.00	\$ 90.00	\$ 55.00	\$ 105.00	\$ 75.00	\$ 45.00	\$ 100.00	\$ 45.00

FEE RECAP	FMG	WK	WP	TOTAL
TASK 1.1 - INVESTIGATIVE SERVICES	\$ 2,880.00	0	0	\$ 2,880.00
TASK 1.2 - REVIEWS FOR PROGRAMMING/SCHEMATIC DESIGN	\$ 10,355.00	\$ 4,100.00	\$ 2,685.00	\$ 17,140.00
TASK 2.1 - 65% DESIGN AND PLAN PREPARATION	\$ 25,695.00		\$ 2,520.00	\$ 28,215.00
TASK 2.2 - 95% DESIGN AND PLAN PREPARATION	\$ 21,715.00		\$ 1,025.00	\$ 22,740.00
TASK 2.3 - 100% DESIGN AND PLAN PREPARATION	\$ 5,180.00		\$ 325.00	\$ 5,505.00
TASK 3.1 - BIDDING PERIOD SERVICES	\$ 4,400.00		\$ 585.00	\$ 4,985.00
TASK 4 - NOT INCLUDED				\$ -
TOTAL ESTIMATED FEES	\$ 70,225.00	\$ 4,100.00	\$ 7,140.00	\$ 81,465.00

FMG MANHOUR RECAP	HOURS
PE/PR - PROFESSIONAL ENGINEER/PRINCIPAL	75
PE/Senior - SENIOR PROFESSIONAL ENGINEER	367
CADD - COMPUTER DRAFTING OPERATOR	322
SC - SURVEY CREW	16
RLS - REGISTERED LAND SURVEYOR	8
CL - CLERICAL	10
SMS/PR - SENIOR MATERIALS SPECIALIST/PRINCIPAL	0
ST - SOILS TECHNICIAN	0

WK = Wenck
WP = West Plains Engineering

FMG, INC.
 ELM AVENUE RECONSTRUCTION - PHASE 4
 NORTH OF E. OAKLAND STREET TO SOUTH OF E. UTAH STREET

Roadway Design, Grading, Curb and Gutter, Surfacing,
 Drainage, Water and Sewer

Project No.
 Utility No.
 ESTIMATED MAN-HOURS AND FEES
 11/11/2008, Revised 12/15/2008

FMG CIVIL ENGINEERING MANHOURS	PE/PR	PE/Senior	CADD	SC	RLS	CL	SMS/PR	ST
MANHOUR RATES	\$ 115.00	\$ 90.00	\$ 55.00	\$ 105.00	\$ 75.00	\$ 45.00	\$ 100.00	\$ 45.00
INVESTIGATIVE SERVICES								
1.1.1 Update Route survey			8	16	2			
1.1.2 Survey Research & Utility Coord					2			
1.1.3 Field Check		2						
1.1.4 Verify Service Line Location w/cards		2						
SUBTOTAL FMG HOURS	0	4	8	16	4	0	0	0
FMG MANHOUR COSTS	\$ -	\$ 360.00	\$ 440.00	\$ 1,680.00	\$ 300.00	\$ -	\$ -	\$ -
TASK 1.1 - FMG CIVIL ENG MANHOUR COST	\$ 2,780.00							
TASK 1.1 - EXPENDABLES AND MILEAGE	\$ 100.00							
TOTAL COST OF TASK 1.1	\$ 2,880.00							

Task 2.1	PE/PR	PE/Senior	CADD	SC	RLS	CL	SMS/PR	ST
65% DESIGN AND PLAN PREPARATION								
2.1.1 Demolition/Take Out Plan Sheets (3 Sheets)		4	12					
2.1.2 Plan & Profile -Main Line (3 Sheets each)		32	40					
2.1.3 Plan & Profile-Intersecting Streets (3 Sheets)	1	16	20					
2.1.4 Plan & Profile-Main Line Utilities	1	20	30					
2.1.5 Plan & Profile-Intersecting Streets Utilities (3 Sheets)	1	8	12					
2.1.6 Curb and Gutter, Pavement and Joint Layout (3 Sheets)	1	18	20					
2.1.7 Pavement Markings & Signage (1 Sheets)		4	6					
2.1.8 Typical Street Sections		2	4					
2.1.9 Storm Sewers & Inlets Design	1	8	12					
2.1.10 Cross Sections (6 Sheets)		6	16					
2.1.11 Construction Limits/ROW Needs		2	2					
2.1.12 Private Utility Coordination		2						
2.1.13 Plans Title Sheet			2					
2.1.14 Construction Sequencing	1	4						
2.1.15 Temporary Traffic Control/Detours	1	4	4					
2.1.16 Storm Water Pollution Protection Plan	2	8	8					
2.1.17 Flood Project Management Water Quality Impact Assessment	2	4						
2.1.18 General Notes	2	12	8					
2.1.19 Estimate of Quantities		12	4					
2.1.20 Opinion of Probable Cost	2	6						
2.1.21 Preliminary Design Report	6	12						
2.1.22 Meetings w/ Engineering, Utility Maintenance, Private Utilities	8	8						
SUBTOTAL FMG HOURS	29	192	200	0	0	0	0	0
FMG MANHOUR COSTS	\$ 3,335.00	\$ 17,280.00	\$ 11,000.00	\$ -	\$ -	\$ -	\$ -	\$ -
TASK 2.1 - FMG CIVIL ENG MANHOUR COST	\$ 31,615.00							
TASK 2.1 - ELECTRICAL ENGINEERING	\$ 2,280.00							
TASK 2.1 - EXPENDABLES AND MILEAGE	\$ 250.00							
TOTAL COST OF TASK 2.1	\$ 34,145.00							

FMG, INC.
ELM AVENUE RECONSTRUCTION - PHASE 4
NORTH OF E. OAKLAND STREET TO SOUTH OF E. UTAH STREET
 Project No.
 Utility No.
ESTIMATED MAN-HOURS AND FEES
 11/11/2008, Revised 12/15/2008

Roadway Design, Grading, Curb and Gutter, Surfacing,
 Drainage, Water and Sewer

100% DESIGN AND PLAN PREPARATION										
Task 2.3										
2.3.1	Final Revisions and Plotting	4	28	40						
		4	28	40	0	0	0	0	0	0
	SUBTOTAL FMG HOURS									
	FMG MANHOUR COSTS	\$ 460.00	\$ 2,520.00	\$ 2,200.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	TASK 2.3 FMG CIVIL ENG MANHOUR COST	\$ 5,180.00								
	TASK 2.3 - ELECTRICAL ENGINEERING	\$ 330.00								
	TOTAL COST OF TASK 2.3	\$ 5,510.00								

BIDDING PERIOD SERVICES										
Task 3.1										
3.1.1	Issue Plans and Specifications to Bidders		2						2	
3.1.2	Plans and Specifications Interpretation	1	2							
3.1.3	Prepare and Issue Addenda		2	2					2	
3.1.4	Prebid Meeting		2							
3.1.5	Bid Opening, Bid Tabulation, Award Recommendation	1	6							
3.1.6	Attend Public Works Meeting if Required		2						2	
3.1.7	Prepare Notice of Award Letter		1							
3.1.8	Prepare Contracts and Submit to Contractor		2							
3.1.9	Review Construction Documents/Submit to City		2							
	SUBTOTAL FMG HOURS	2	21	2	0	0	0	0	6	0
	FMG MANHOUR COSTS	\$ 230.00	\$ 1,890.00	\$ 110.00	\$ -	\$ -	\$ -	\$ -	\$ 270.00	\$ -
	TASK 3.1 FMG CIVIL ENG MANHOUR COST	\$ 2,500.00								
	TASK 3.1 - ELECTRICAL ENGINEERING	\$ 585.00								
	TASK 3.1 - PRINTING	\$ 1,900.00								
	TOTAL COST OF TASK 3.1	\$ 4,985.00								

Printing Costs assume 30 sets of plans and specs at \$60/set + \$100 shipping

TASK 4 - CONSTRUCTION PERIOD SERVICES										
	NOT INCLUDED									
	SUBTOTAL FMG HOURS	0	0	0	0	0	0	0	0	0
	FMG MANHOUR COSTS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	TASK 4 - FMG CIVIL ENG MANHOUR COST	\$ -								
	TASK 4 - ELECTRICAL ENGINEERING									
	TASK 4 - MILEAGE AND EXPENDABLES									
	TOTAL COST OF TASK 4	\$ -								
	TOTAL OF TASKS 1 - 4	\$ 75,325.00								

FMG, INC.
ELM AVENUE RECONSTRUCTION - PHASE 4
NORTH OF E. OAKLAND STREET TO SOUTH OF E. UTAH STREET
 Project No.
 Utility No.
ESTIMATED MAN-HOURS AND FEES
 11/11/2008, Revised 12/15/2008

Roadway Design, Grading, Curb and Gutter, Surfacing,
 Drainage, Water and Sewer

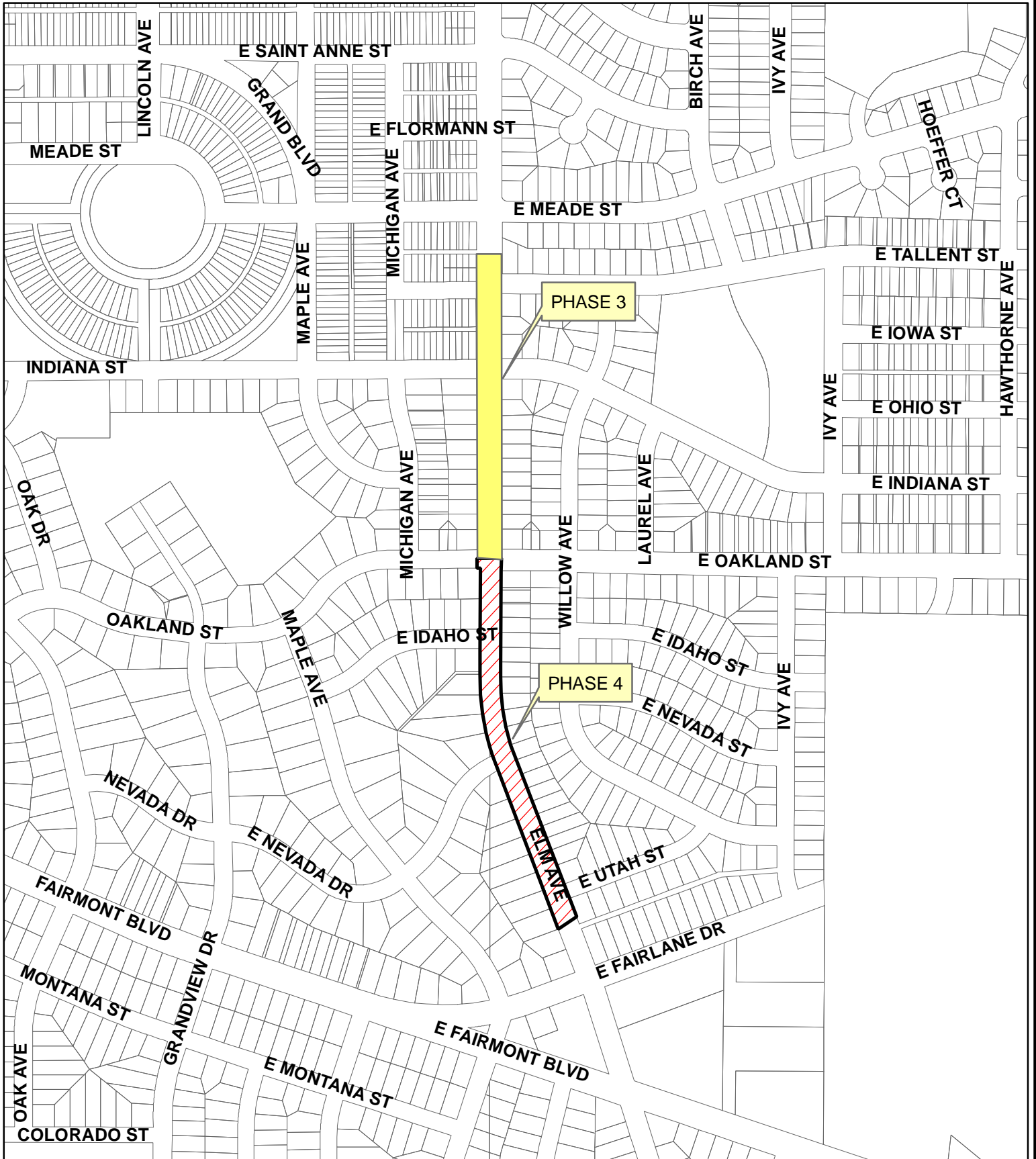
FEE RECAP	FMG	WP	TOTAL
TASK 1.1 - INVESTIGATIVE SERVICES	\$ 2,880.00	0	\$ 2,880.00
TASK 2.1 - 65% DESIGN AND PLAN PREPARATION	\$ 31,865.00	\$ 2,280.00	\$ 34,145.00
TASK 2.2 - 95% DESIGN AND PLAN PREPARATION	\$ 26,755.00	\$ 1,050.00	\$ 27,805.00
TASK 2.3 - 100% DESIGN AND PLAN PREPARATION	\$ 5,180.00	\$ 330.00	\$ 5,510.00
TASK 3.1 - BIDDING PERIOD SERVICES	\$ 4,400.00	\$ 585.00	\$ 4,985.00
TASK 4 - NOT INCLUDED			\$ -
TOTAL ESTIMATED FEES	\$ 71,080.00	\$ 4,245.00	\$ 75,325.00

FMG MANHOUR RECAP	HOURS
PE/PR - PROFESSIONAL ENGINEER/PRINCIPAL	55
PE/Senior - SENIOR PROFESSIONAL ENGINEER	358
CADD - COMPUTER DRAFTING OPERATOR	397
SC - SURVEY CREW	20
RLS - REGISTERED LAND SURVEYOR	8
CL - CLERICAL	6
SMS/PR - SENIOR MATERIALS SPECIALIST/PRINCIPAL	0
ST - SOILS TECHNICIAN	0

WP = West Plains Engineering

EXHIBIT "A"

SCALE 1" = 500'



ELM AVENUE PHASE 3 & 4

PROJECT NO. ST09-1759 CIP NO. 50130
& PROJECT NO. ST10-1770 CIP NO. 50643