

**Agreement Between City of Rapid City and TSP for Professional Services for
Rapid City Administration Facility Renovation
Project No. 19-2491**

AGREEMENT made _____, 2019, between the City of Rapid City, SD (City) and TSP, (Consultant), located at 600 Kansas City Street, Rapid City SD 57701. City intends to obtain services for Design and Construction Administration Services for City Administration Facility, Project No. 19-2491. The scope of services is as described within this document and as further described in attached Exhibits.

The City and the Consultant agree as follows:

The Consultant shall provide professional consulting services for the City in all phases of the Project and as further defined in attachments, serve as the City's professional representative for the Project, and give professional design and construction consultation and advice to the City while performing its services.

Section 1—Basic Services of Consultant

1.1 General

- 1.1.1 The Consultant shall perform professional services described in this agreement, which include customary architectural and engineering services. Consultant intends to serve as the City's professional representative for those services as defined in this agreement and to provide advice and consultation to the City as a professional. Any opinions of probable project cost, approvals, and other decisions provided by Consultant for the City are rendered on the basis of experience and qualifications and represent Consultant's professional judgment.
- 1.1.2 All work shall be performed by or under the direct supervision of a professional Architect and Engineers licensed to practice in South Dakota.
- 1.1.3 All documents including Drawings and Specifications provided or furnished by Consultant pursuant to this Agreement are instruments of service in respect of the Project and Consultant shall retain an ownership therein. Reuse of any documents pertaining to this project by the City on extensions of this project or on any other project shall be at the City's risk. The City agrees to defend, indemnify, and hold harmless Consultant from all claims, damages, and expenses including attorney's fees arising out of such reuse of the documents by the City or by others acting through the City.



- 1.1.4 The contract will be based on a lump sum and reimbursable fee schedule with a maximum not-to-exceed amount.

1.2 **Scope of Work**

The Consultant shall:

- 1.2.1 Consult with the City, other agencies, groups, consultants, and/or individuals to clarify and define requirements for the Project and review available data.
- 1.2.2 Perform the tasks described in the attached Scope of Services.

Section 2—Information Provided by City

The City will provide any information in its possession for the project at no cost to the Consultant.

Section 3—Notice to Proceed

The City will issue a written notification to the Consultant to proceed with the work. The Consultant shall not start work prior to receipt of the written notice. The Consultant shall not be paid for any work performed prior to receiving the Notice to Proceed.

Section 4—Mutual Covenants

4.1 **General**

- 4.1.1 The Consultant shall not sublet or assign any part of the work under this Agreement without written authority from the City.
- 4.1.2 The City and the Consultant each binds itself and partners, successors, executors, administrators, assigns, and legal representatives to the other party to this agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, regarding all covenants, agreements, and obligations of this agreement.
- 4.1.3 Nothing in this agreement shall give any rights or benefits to anyone other than the City and the Consultant.
- 4.1.4 This agreement constitutes the entire agreement between the City and the Consultant and supersedes all prior written or oral understandings. This agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.



- 4.1.5 The Consultant shall make such revisions in plans which may already have been completed, approved, and accepted by the City, as are necessary to correct Consultant's errors or omissions in the plans, when requested to do so by the City, without extra compensation therefore.
- 4.1.6 If the City requests that previously satisfactorily completed and accepted plans or parts thereof be revised, the Consultant shall make the revisions requested by the City. This work shall be paid for as extra work.
- 4.1.7 If the City changes the location from the one furnished to the Consultant, or changes the basic design requiring a new survey for the portions so changed, the redesign will be paid for as extra work.
- 4.1.8 The City may at any time by written order make changes within the general scope of this Agreement in the work and services to be performed by the Consultant. Any changes which materially increase or reduce the cost of or the time required for the performance of the Agreement shall be deemed a change in the scope of work for which an adjustment shall be made in the Agreement price or of the time for performance, or both, and the Agreement shall be modified in writing accordingly. Additional work necessary due to the extension of project limits shall be paid for as extra work.
- 4.1.9 Extra work, as authorized by the City, will be paid for separately and be in addition to the consideration of this Section.
- 4.1.10 For those projects involving conceptual or process development services, activities often cannot be fully defined during the initial planning. As the project does progress, facts and conditions uncovered may reveal a change in direction that may alter the scope of services. Consultant will promptly inform the City in writing of such situations so that changes in this agreement can be renegotiated.
- 4.1.11 This Agreement may be terminated (a) by the City with or without cause upon seven days' written notice to the Consultant and (b) by the Consultant for cause upon seven days' written notice to the City. If the City terminates the agreement without cause, the Engineer will be paid for all services rendered and all reimbursable expenses incurred prior to the date of termination.

If termination is due to the failure of the Consultant to fulfill its agreement obligations, the City may take over the work and complete it. In such case, the Consultant shall be liable to the City for any additional cost to the extent directly resulting from Consultant's action.



- 4.1.12 The City or its duly authorized representatives may examine any books, documents, papers, and records of the Consultant involving transactions related to this agreement for three years after final payment. All examinations will be performed at reasonable times, with proper notice. Consultant's documentation will be in a format consistent with general accounting procedures.
- 4.1.13 The City shall designate a representative authorized to act on the City's behalf with respect to the Project. The City or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.
- 4.1.14 Costs and schedule commitments shall be subject to renegotiation for delays caused by the City's failure to provide specified facilities or information or for delays caused by other parties, excluding sub-contractors and sub-consultants, unpredictable occurrences including without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdowns, acts of God, or the public enemy, or acts of regulations of any governmental agency or any other conditions or circumstances beyond the control of the City or Consultant. Temporary delays of services caused by any of the above which results in additional costs beyond those outlined may require renegotiation of this agreement.
- 4.1.15 The City will give prompt written notice to the Consultant if the City becomes aware of any fault or defect in the Project or nonconformance with the Project Documents.
- 4.1.16 Unless otherwise provided in this Agreement, the Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos products, polychlorinated biphenyl (PCB), or other toxic substances.
- 4.1.17 In the event asbestos or toxic materials are encountered at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of Consultant's services, Consultant may, at their option and without liability for consequential or any other damages, suspend performance of services on the project until the City retains appropriate specialists or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials.



- 4.1.18 This agreement, unless explicitly indicated in writing, shall not be construed as giving Consultant the responsibility or authority to direct or supervise construction means, methods, techniques, sequences, or procedures of construction selected by any contractors or subcontractors or the safety precautions and programs incident to the work of any contractors or subcontractors.
- 4.1.19 Neither the City nor the Consultant shall hold the other liable for any claim based upon, arising out of, or in any way involving the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants.
- 4.1.20 Neither the City nor the Consultant shall hold the other liable for any claim based upon, arising out of, or any way involving the specification or recommendation of asbestos, in any form, or any claims based upon use of a product containing asbestos.
- 4.1.21 Engineer hereby represents and warrants that it does not fail or refuse to collect or remit South Dakota or City sales or use tax for transactions which are taxable under the laws of the State of South Dakota.

4.2 **City of Rapid City NonDiscrimination Policy Statement**

In compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination act of 1975, the Americans with Disabilities Act of 1990, and other nondiscrimination authorities it is the policy of the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701-5035, to provide benefits, services, and employment to all persons without regard to race, color, national origin, sex, disabilities/handicaps, age, or income status. No distinction is made among any persons in eligibility for the reception of benefits and services provided by or through the auspices of the City of Rapid City.

Consultant will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission, its agencies or representatives, to ascertain compliance with the above provisions.

This section shall be binding on all subcontractors or suppliers.



Section 5—Payments to the Engineer

5.1 Schedule of Pay Rates

The City will pay the Consultant for services rendered or authorized extra work according to the Consultant's rate schedule described in attachment.

5.2 Fee

The maximum amount of the fee for the services as detailed in Section 1.2 shall not exceed \$238,200.00 including reimbursable expenses, unless the scope of the project is changed as outlined in Section 4. If expenses exceed the maximum amount, the Consultant shall complete the design as agreed upon here without any additional compensation. Sub task dollar amounts may be reallocated to other tasks as long as the total fee is not exceeded. Prime consultant may not mark up sub-consultant or sub-contractor services.

5.3 Progress Payments

Monthly progress payments shall be processed by the City upon receipt of the claim as computed by the Consultant based on work completed during the month and allowable reimbursable as established in Section 5.1 and approved by the City.

Net payment to the Consultant shall be due within forty-five (45) days of receipt by the City.

Section 6—Completion of Services

The Consultant shall complete services on or before September 1, 2020 based on a notice to proceed on or before May 1, 2019.

Section 7—Insurance Requirements

7.1 Insurance Required

The Consultant shall secure the insurance specified below. The insurance shall be issued by insurance company(s) acceptable to the City and may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance including any policy endorsements shall be provided to the City prior to or upon the execution of this Agreement.

7.2 Cancellation

The Consultant will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The



Consultant agrees to hold the City harmless from any liability, including additional premium due because of the Consultant's failure to maintain the coverage limits required.

7.3 City Acceptance of Proof

The City's approval or acceptance of certificates of insurance does not constitute City assumption of responsibility for the validity of any insurance policies nor does the City represent that the coverages and limits described in this agreement are adequate to protect the Consultant's or subcontractors interests, and assumes no liability therefore. The Consultant will hold the City harmless from any liability, including additional premium due, because of the Consultant's failure to maintain the coverage limits required.

7.4 Specific Requirements

7.4.1 Workers' compensation insurance with statutory limits required by South Dakota law. Coverage B-Employer's Liability coverage of not less than \$500,000 each accident, \$500,000 disease-policy limit, and \$500,000 disease-each employee.

7.4.2 Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury and property damage liability coverage with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. If the occurrence form is not available, claims-made coverage shall be maintained for three years after completion of the terms of this agreement. The policy shall name the City and its representatives as an additional insured.

7.4.3 Automobile liability insurance covering all owned, nonowned, and hired automobiles, trucks, and trailers. The coverage shall be at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.

7.4.4 Professional liability insurance providing claims-made coverage for claims arising from the negligent acts, errors or omissions of the Engineer or its consultants, of not less than \$1,000,000 each occurrence and not less than \$1,000,000 annual aggregate. Coverage shall be maintained for at least three years after final completion of the services.



Section 8—Hold Harmless

The Consultant hereby agrees to hold the City harmless from any and all claims or liability including attorneys' fees arising out of the professional services furnished under this Agreement, and for bodily injury or property damage arising out of services furnished under this Agreement, providing that such claims or liability are the result of a negligent act, error or omission of the Consultant and/or its employees/agents arising out of the professional services described in the Agreement.

Section 9—Independent Business

The parties agree that the Consultant operates an independent business and is contracting to do work according to his own methods, without being subject to the control of the City, except as to the product or the result of the work. The relationship between the City and the Consultant shall be that as between an independent contractor and the City and not as an employer-employee relationship. The payment to the Consultant is inclusive of any use, excise, income or any other tax arising out of this agreement.

Section 10-Indemnification

If this project involves construction and Consultant does not provide consulting services during construction including, but not limited to, onsite monitoring, site visits, site observation, shop drawing review and/or design clarifications, City agrees to indemnify and hold harmless Engineer from any liability arising from the construction activities undertaken for this project, except to the extent such liability is caused by Consultant's negligence.

Section 11-Controlling Law and Venue

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of South Dakota, without regard to any conflicts of law provisions. Parties agree to submit to the exclusive venue and jurisdiction of the State of South Dakota, 7th Judicial Circuit, Pennington County.

Section 12-Severability

Any unenforceable provision herein shall be amended to the extent necessary to make it enforceable; if not possible, it shall be deleted and all other provisions shall remain in full force and effect.

Section 13—Funds Appropriation

If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this agreement, this agreement shall impose no obligation on the City for payment. This agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or



damage shall accrue to the benefit of the Consultant, its successors or assignees, for any further payments. For future phases of this or any project, project components not identified within this contract shall not constitute an obligation by the City until funding for that component has been appropriated.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

City of Rapid City:

Consultant:

MAYOR

TSP

DATE: _____

DATE: _____

ATTEST:

FINANCE OFFICER

Reviewed By:

ROD JOHNSON, PROJECT MANAGER

DATE: _____

CITY'S DESIGNATED PROJECT
REPRESENTATIVE

CONSULTING FIRM'S DESIGNATED
PROJECT REPRESENTATIVE

NAME Rod Johnson
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