September 7, 2016

Re: Request for Proposals
    Water and Water Reclamation Utility Rate Study
    Project No. 16-2191 / CIP No. 50935

Dear Consultant:

You are hereby invited to submit a proposal to provide professional services for the above referenced project per the attached request for proposals.

If you are interested, please submit your proposal by 2:00 p.m. MDT on October 5, 2016. The submitted proposals will be reviewed by Public Works staff, and a short list of firms to be interviewed will be selected. Interviews are tentatively scheduled for October 19, 2016.

Please note that the attached forms will be used to evaluate the proposals and interviews.

If you have any questions please contact Dan Coon as noted in the Request for Proposals.

Sincerely,

CITY OF RAPID CITY

[Signature]

Dale Tech, PE/LS
Interim Public Works Director

Attachment
Request for Proposal
INTRODUCTION

The City of Rapid City (City) Public Works Department requests proposals for professional services for development and implementation of a Utility Rate Study for its Water and Water Reclamation utilities. The proposed rate study will develop a plan for the Water and Water Reclamation Divisions that will position the City to meet current and future operation and maintenance expenses, capital requirements, identify proposed funding strategies for capital improvements, ensure the Water and Water Reclamation rate structures reflect the true cost of service, provide fair and equitable rates across all user classes and maintain revenue stability for the Water and Water Reclamation Divisions.

Objectives of the Water and Water Reclamation Utility Rate Study will include, but not be limited to:


- Development of water and water reclamation rate policies to govern development of this and future water and water reclamation utility rate plans.

- Development of new City ordinances necessary for implementation of the new water and water reclamation utility rate plan.

- Development of a rate model that will allow the City to check the adequacy of rates and funding at selected intervals after implementation of the new rate plan.

BACKGROUND

The City of Rapid City’s most recent water and water reclamation rate study was developed in February 2009. New water and water reclamation rates and fees for the years 2009 through 2013 were developed based on the 2009 Utility Rate Study. Rapid City’s water and water reclamation rates and fees have not been changed since implementation of the 2013 rates and fees.

The City of Rapid City has begun work on development of a new Water System Master Plan and a new Water Reclamation System Master Plan. Information from these master planning efforts, such as water and water reclamation usage rates and capital improvement needs, will be provided to the selected firm for use in the Utility Rate Study.
SCOPE OF SERVICES REQUESTED

The City of Rapid City anticipates the project will consist of the following basic Scope of Services. However, the City of Rapid City encourages consultants interested in providing this service to present innovative solutions based on past experience and knowledge. A final Scope of Services will be established with the selected consultant.

Compile and Review Existing Information

In conjunction with City staff members identify, compile, and review existing information that is pertinent to development of new water and water reclamation rate structures. The level of effort required by the City staff members or the selected consultant will be determined during final scoping of the project. The information anticipated to be reviewed under this task includes:

- The City’s current rate structure, ordinances, and supporting documentation.
- The City’s water and water reclamation user characteristics.
- Existing and proposed water and water reclamation infrastructure Capital Improvement Plans.
- Historical water and water reclamation operation and maintenance costs and characteristics.

Development of Rate Structure

Develop proposed water and water reclamation rate structures which, at a minimum, consider the following factors:

- Current and future cost of providing water and water reclamation service in accordance with established and anticipated standards and regulations.
- Funding of all anticipated water and water reclamation operation, maintenance, and capital costs.
- Funding requirements of all current and anticipated long-term liabilities and debt obligations.
- Age and condition of water and water reclamation systems and the need to fully fund long-term capital improvement, replacement and expansion related infrastructure.
- Equity of rates for different user classes.
- Service fee structure
- Stable and predictable revenue stream for the water and water reclamation enterprises.
- Alternative revenue sources such as plant impact fees.
- Recommended water and water reclamation enterprise fund reserve amounts.
- Compatibility with the City’s Utility Billing System.
- Water conservation measures.
- Recommended out of City limits rate(s).
- Ability of rate structures to be easily understood, administered and defended.
Interaction with City Council and Public

It is anticipated a utility rate committee will be formed to provide guidance to City staff members and the selected consultant in development of water and water reclamation rates. The selected consultant will be required to interact with this committee during the course of the project. The selected consultant will be required to present proposed water and water reclamation rate structures to the City Council and public at intermittent times throughout the project.

Development of Ordinances and Policies

The selected consultant will assist City staff in development of the ordinances necessary for implementation of the final rate structure, fees and policies resulting from this project. The selected consultant will propose and assist in development of water and water reclamation rate policies for this and future water and water reclamation utility rate plans.

Documentation of Rate Structure

The selected consultant will be required to document the final approved rate structure and the process used and alternatives presented in development of the water and water reclamation rates. Spreadsheets or computer programs developed as part of this project will be submitted to the City of Rapid City for future use.

The selected consultant shall provide the City with a simple usable tool that will allow the City to periodically check the status and adequacy of rates and funding at selected intervals after implementation of the new rate plan.

CONSULTANT SELECTION PROCESS

Consultants interested in providing the above described services to the City shall submit a proposal to the City describing their qualifications to do so. As part of the proposal, the Consultant shall include a listing of the personnel proposed to work on the project. The personnel list shall include job classification, the individual’s name, and a brief description of their role. In addition, the proposal shall include an itemized task list which identifies the corresponding personnel anticipated to be working on each task.

The City’s Consultant Selection Committee for this project will review the proposals utilizing the criteria shown in the attached “Proposal Evaluation Form” and finalists will be selected for interviews. Consultants submitting proposals will be notified of the Selection Committee’s decision and if selected, will be scheduled for an interview.

The City of Rapid City’s Consultant Selection Committee for this project shall evaluate the consultants interviewed utilizing the criteria shown in the attached “Interview Evaluation Form”. The top rated firm based on both the proposal and interview will be selected to perform the engineering services and contract negotiation will commence. After successful contract negotiations, a contract will be presented to the City Council for approval. Upon contract approval by the Mayor and City Council a notice to proceed will be issued for each phase of the
If terms cannot be mutually agreed upon, the City may enter into negotiations with another firm.

**COMPENSATION FOR SERVICES (FEE):**

The City intends to enter into a professional services contract for the work per the negotiated scope of work for each phase. The contracts will be based on a fee and itemized task schedule with a maximum not-to-exceed amount. A sample of the City’s standard professional services agreement is attached for your information.

**ANTICIPATED SCHEDULE**

The following is the anticipated schedule for this project. The City, at its discretion, may change this schedule to fit the project’s needs.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request for Proposals Issued</td>
<td>September 7, 2016</td>
</tr>
<tr>
<td>Consultant Proposals Submitted</td>
<td>October 5, 2016</td>
</tr>
<tr>
<td>Consultant Interviews</td>
<td>October 19, 2016</td>
</tr>
<tr>
<td>Notify Selected Consultant</td>
<td>October 24, 2016</td>
</tr>
<tr>
<td>Contract Negotiations Complete</td>
<td>December 2, 2016</td>
</tr>
<tr>
<td>City Council Approval</td>
<td>December 19, 2016</td>
</tr>
<tr>
<td>Notice to Proceed</td>
<td>January 5, 2016</td>
</tr>
<tr>
<td>Development of Rate Study</td>
<td>TBD</td>
</tr>
</tbody>
</table>

**TIME FOR PERFORMANCE**

The time for performance of the services described herein will be determined during the project contract negotiations. The consultant, in conjunction with the project management team, will prepare a schedule for completion of each phase of the project. These schedules will include milestone dates for completion of the individual tasks identified in the project contract negotiations. These schedules will be integrated into and become part of the project contracts.

**MEETINGS**

The frequency and type of meetings to be conducted during the project will be determined during the project contract negotiations.

**GENERAL INSTRUCTIONS**

1. Inquiries

   Please direct questions to:

   Dan Coon, P.E.
   Engineering Services Division
   300 Sixth Street
   Rapid City, SD  57701
   (605) 394-4154
   e-mail: dan.coon@rcgov.org
All firms submitting a proposal shall identify a single contact person for receipt of responses and information from the City. The preferred method of receipt and distribution of information will be by e-mail. Therefore, please include a contact name, phone number, mailing address and e-mail address with your proposal.

2. **Contractual Responsibility**

Consortia, joint ventures, or teams, although permitted and encouraged, will not be considered responsive unless it is established that all contractual responsibility rests solely with one firm or one legal entity which shall not be a subsidiary or affiliate with limited resources. Each proposal should indicate the entity responsible for execution on behalf of the proposal team.

3. **Addenda and Supplements to RFP**

In the event that it becomes necessary to revise any part of this RFP or if additional information is necessary to enable the proposers to make adequate interpretation of the provisions of this Request for Proposals, a supplement to the RFP will be issued.

4. **Rejection Rights**

The City of Rapid City retains the right to re-solicit for proposals if deemed to be in its best interest. Selection is also dependent upon the negotiation of a mutually acceptable contract with the highest ranked interviewee. If the City cannot negotiate a mutually acceptable contract with the highest evaluated interviewee, the City will negotiate with the next highest evaluated interviewee, and so forth, until a mutually acceptable contract is reached.

5. **General Expertise Required**

The services envisioned within this Request for Proposal includes all disciplines necessary for the proper execution of the project desired.

6. **Contract Amendment**

The City of Rapid City retains the right to amend both the Request for Proposal and the contract with the successful interviewee to include other possible areas of concern with this project.

7. **Proposal Submission**

Please submit six (6) hardcopies and one (1) electronic copy on a CD or DVD in pdf format of your proposal to the contact listed above no later than 2:00 p.m. October 5, 2016. A duly authorized official of the proposer must sign proposals.
8. **Cost of Developing Proposals**

All costs related to the preparation of the proposal, interview, or any other related activity are the sole responsibility of the firm. No reimbursement will be made by the City of Rapid City for costs incurred prior to a formal notice to proceed under a contract.

9. **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

City of Rapid City  
300 6th St.  
Rapid City, SD 57701

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.

If you have any concerns regarding the provisions of services or employment on the basis of disability/handicap you may contact the City’s ADA/Section 504 coordinator at telephone number (605) 394-4110.
### PROPOSAL EVALUATION FORM (25 Total Points Possible)

**Project Name:** Water And Water Reclamation Utility Rate Study  
**Interviewer:** ________________________________  
**Firm Name:** ____________________________________  
**Date:** _______________________________________

#### PROPOSAL EVALUATION CRITERIA

<table>
<thead>
<tr>
<th>PROPOSAL EVALUATION CRITERIA</th>
<th>Scoring (Circle One)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>P1: Firm’s Project Team - 25% of total</strong></td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>The evaluator should consider the following information when scoring this category:</td>
<td></td>
</tr>
<tr>
<td><strong>A.</strong> Size of the contract as compared to the size or ability of the firm and its’ associate firms and consultants as one team to handle the project;</td>
<td></td>
</tr>
<tr>
<td><strong>B.</strong> The education, experience, and qualifications of the personnel within the submitting firm; and by attachment that of its’ associate firm(s), if any.</td>
<td></td>
</tr>
<tr>
<td><strong>C.</strong> Name, experience and past performance of person(s) to be assigned as project manager(s) that will have direct contact with City staff. These are in addition to those indicated in item B. above;</td>
<td></td>
</tr>
<tr>
<td><strong>D.</strong> Names of firm’s key staff to be assigned to project with description of each person’s experience and how it relates to this project’s specific requirements;</td>
<td></td>
</tr>
<tr>
<td><strong>E.</strong> Ability to expand the firm’s capabilities by working with other consultants or branch offices (if required).</td>
<td></td>
</tr>
</tbody>
</table>

| **P2: Firm’s Experience with Similar Projects and Other Relevant Agencies within the Past 5 Years – 20% of total** | 1 2 3 4 5 6 7 8 9 10 |
| The evaluator should consider the following information when scoring this category:         |                      |
| **A.** A summary of similar work that has been done in-house over the past five years; as it pertains to development of utility rate studies, finance, and economics. |                      |
| **B.** Prior experience with other relevant agencies for the past five years such as other municipalities, South Dakota DOT, South Dakota DENR, and others. |                      |

| **P3: Firm’s Experience and Familiarity with Rapid City Design Criteria and Standards – 20% of total** | 1 2 3 4 5 6 7 8 9 10 |
| The evaluator should consider the following information when scoring this category:         |                      |
| **A.** Firm’s staff's direct experience (in-house capability) with this type of project |                      |
| **B.** Firm’s familiarity with City design criteria and standards, ordinances, and water and sewer policies. |                      |
| **C.** Other information to consider would be the firm’s experience, knowledge, and understanding of City bidding and contracting methodology and City construction administration processes and the firm’s experience with other City Departments and Divisions. |                      |

1 = Fails to meet the expectations of the reviewer in this category  
10 = Fully meets the expectation of the reviewer in this category
# P4: Firm’s Management Procedures – 20% of total

The evaluator should consider the following information when scoring this category:

- **A.** Firm’s organizational structure must be clearly defined with personnel qualifications and where actual work will be done;
- **B.** A statement regarding whether any litigation is pending or underway regarding activities of the firm or its principals within the last five years and the circumstances of the litigation;
- **C.** A current certificate of insurance, including errors and omissions, executed by the insurance carrier’s authorized agent;
- **D.** Firm’s Management Procedures; Past performance meeting budgets & schedules, including methodology and procedures used to accomplish this objective. The firm’s history in meeting project budgets and schedules. The firm’s QA/QC methodology and procedures including personnel responsible for QA/QC. The firm’s methodology, procedures and ability to meet project schedules.

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
</table>

# P5: Office Location – 10% of total

The evaluator should consider the following information when scoring this category:

Indicate the office location of the project manager, key staff members, and sub-consultants.

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
</table>

# P6: Quality of Proposal – 5% of total

The evaluator should consider the following information when scoring this category.

Proposal should be clear, concise, well written, well organized, utilize correct spelling, proper grammar, exemplify the characteristics of a professional document, and address the “Proposal Evaluation Criteria”.

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
</table>
### INTERVIEW EVALUATION CRITERIA

<table>
<thead>
<tr>
<th>I1: Project Approach and Demonstration of Project Understanding and Issues – 45% of total</th>
<th>Scoring (Circle One)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Familiarization and understanding of the project and project issues including potential alternatives;</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>B. Approach toward project implementation and completion;</td>
<td></td>
</tr>
<tr>
<td>C. Experience with key project elements;</td>
<td></td>
</tr>
<tr>
<td>D. Project components including phasing and sequencing;</td>
<td></td>
</tr>
<tr>
<td>E. Innovative approaches, techniques or methods proposed to meet the project objectives;</td>
<td></td>
</tr>
<tr>
<td>F. Approach toward public involvement as it pertains to public meetings and interaction with individuals. Approach toward interacting with other governmental entities and City Elected Officials, Departments &amp; Divisions;</td>
<td></td>
</tr>
<tr>
<td>G. Understanding of the project schedule and critical milestones;</td>
<td></td>
</tr>
<tr>
<td>H. Identification or recognition of potential project pitfalls and challenges.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>I2: Past Performance – 20% of total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Ability to meet budgets;</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>B. Ability to meet timelines/milestones/completion dates;</td>
<td></td>
</tr>
<tr>
<td>C. Ability to produce complete and understandable documents;</td>
<td></td>
</tr>
<tr>
<td>D. Ability to stay within scope;</td>
<td></td>
</tr>
<tr>
<td>E. Effectiveness in working with the public;</td>
<td></td>
</tr>
<tr>
<td>F. Past work products have limited review comments;</td>
<td></td>
</tr>
<tr>
<td>G. Produced documents that are legible and organized.</td>
<td></td>
</tr>
</tbody>
</table>
### I3: Past Performance of Quality Control and Quality Assurance (QA/QC) – 15% of total

The evaluator should consider the following information when scoring this category:

A. Completeness of documents and deliverables;
B. Minimizing the number and frequency of errors;
C. Expectations - the project meets the owner’s objectives and intent for the project;
D. Quality - past deliverables are of high quality (adherence to City design criteria and standards as well as general document legibility and organization).

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
</table>

### I4: The Firm's Project Team and Task Assignment Summary – 15% of total

The evaluator should consider the following information when scoring this category:

A. If a consortium of individuals or firms, amount and type of work to be done in respective offices and how quality and schedule of work will be controlled by assigned project manager(s);
B. Name, experience and past performance of person(s) to be assigned as project manager(s) and to have direct contact with City staff;
C. Names of firm’s staff to be assigned to project tasks with description of each person’s experience and how it relates to this project’s specific requirements.

The firm shall indicate the project team members assigned to each task identified in the RFP scope of services. The firm shall provide the proposed billing rates for each team member proposed to be working on the project.

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
</table>

### I5: Quality of Interview – 5% of total

The evaluator should consider the following information when scoring this category.

The firm’s interview should be articulate, clear, concise, and organized. The firm should communicate project issues, ideas, alternatives, and address the “Interview Evaluation Criteria”.

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
</table>

---

1 = Fails to meet the expectations of the reviewer in this category
10 = Fully meets the expectation of the reviewer in this category
Agreement Between City of Rapid City and_________________________________
for Professional Services for__________________________________________,
Project No. _________

AGREEMENT made _________________________________, 20 ____, between the City of Rapid City, SD (City) and ____________________________, (Engineer), located at _____________________________. City intends to obtain professional services for ____________________________________, Project No. _______ CIP No. ___________. The scope of services is as described within this document and as further described in Exhibits A, B and C (attached).

The City and the Engineer agree as follows:

The Engineer shall provide professional engineering services for the City in all phases of the Project and as further defined in Exhibits A, B and C (attached), serve as the City’s professional engineering representative for the Project, and give professional engineering consultation and advice to the City while performing its services.

Section 1—Basic Services of Engineer

1.1 General

1.1.1 The Engineer shall perform professional services described in this agreement, which include customary engineering services. Engineer 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 Engineer for the City are rendered on the basis of experience and qualifications and represent Engineer’s professional judgment.

1.1.2 All work shall be performed by or under the direct supervision of a professional Engineer licensed to practice in South Dakota.

1.1.3 All documents including Drawings and Specifications provided or furnished by Engineer pursuant to this Agreement are instruments of service in respect of the Project and Engineer 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 Engineer 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 an hourly rate and reimbursable fee schedule with a maximum not-to-exceed amount.
1.2 **Scope of Work**

The Engineer 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 Scope of Services. (See Exhibit A.)

**Section 2—Information Provided by City**

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

**Section 3—Notice to Proceed**

The City will issue a written notification to the Engineer to proceed with the work. The Engineer shall not start work prior to receipt of the written notice. The Engineer 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 Engineer 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 Engineer 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 Engineer.

4.1.4 This agreement constitutes the entire agreement between the City and the Engineer 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 Engineer shall make such revisions in plans which may already have been completed, approved, and accepted by the City, as are necessary to correct Engineer’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 Engineer 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 Engineer, 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 Engineer. 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. Engineer 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 Engineer and (b) by the Engineer 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 Engineer to fulfill its agreement obligations, the City may take over the work and complete it. In such case, the Engineer shall be liable to the City for any additional cost to the extent directly resulting from Engineer’s action.
4.1.12 The City or its duly authorized representatives may examine any books, documents, papers, and records of the Engineer involving transactions related to this agreement for three years after final payment. All examinations will be performed at reasonable times, with proper notice. Engineer’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 Engineer in order to avoid unreasonable delay in the orderly and sequential progress of the Engineer’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 subcontractors 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 Engineer. 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 Engineer 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 Engineer and the Engineer’s consultants 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 Engineer’s services, Engineer 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 specialist CONSULTANT(S) 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 Engineer 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 Engineer, nor its Consultants, 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 Engineer, nor its Consultants, 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.

Engineer 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 Engineer for services rendered or authorized extra work according to the Engineer’s hourly and reimbursable rate schedule described in Exhibit C.

5.2 Fee

The maximum amount of the fee for the services as detailed in Section 1.2 shall not exceed $_________ unless the scope of the project is changed as outlined in Section 4. If expenses exceed the maximum amount, the Engineer 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 Engineer based on work completed during the month per the hourly rates and allowable reimbursable as established in Section 5.1 and approved by the City.

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

Section 6—Completion of Services

The Engineer shall complete services on or before ______________ based on a Notice to Proceed date of _____________.

Section 7—Insurance Requirements

7.1 Insurance Required

The Engineer 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 Engineer 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 Contractor agrees to hold the City harmless from any liability, including additional premium due because of the Contractor’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 Engineer, its consultants or subcontractors interests, and assumes no liability therefore. The Engineer will hold the City harmless from any liability, including additional premium due, because of the Engineer’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 Engineer 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 Engineer and/or its employees/agents arising out of the professional services described in the Agreement.

Section 9—Independent Business

The parties agree that the Engineer 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 Engineer shall be that as between an independent contractor and the City and not as an employer-employee relationship. The payment to the Engineer 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 Engineer 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 Engineer’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 Engineer, 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:     Engineer:

__________________________________________________________
MAYOR                                                         ENGINEER

DATE: ___________________________  DATE: ___________________________

ATTEST:

FINANCE OFFICER

Reviewed By:

DAN COON, OPERATIONS MANAGEMENT ENGINEER

DATE: ___________________________

CITY’S DESIGNATED PROJECT REPRESENTATIVE  ENGINEERING FIRM’S DESIGNATED PROJECT REPRESENTATIVE

NAME ____________________                       NAME _________________________
PHONE ___________________                       PHONE ________________________
EMAIL ____________________                       EMAIL _________________________