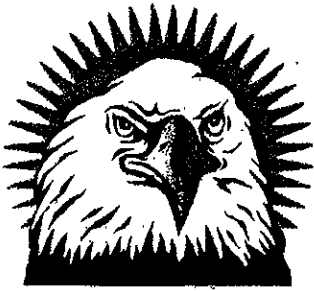


LF083105-26



# Advanced Engineering & Surveying, LLC

8 West Mt. Rushmore Road • Custer, SD 57730  
1030 West Main Street • P.O. Box 9743 • Rapid City, SD 57709

## AGREEMENT FOR PROFESSIONAL SERVICES

### Nugget Gulch Street Extension Rapid City project No.:

This contract between **Advanced Engineering & Surveying, LLC** hereinafter referred to as the **ENGINEER** and the **City of Rapid City, South Dakota**, hereinafter referred to as the **OWNER**, provides for the furnishing of professional services for the fees hereinafter described for the **Nugget Gulch Street Extension, Project Number 505-1534**, City of Rapid City, South Dakota.

#### Services

Upon authorization by the **OWNER**, the **ENGINEER** agrees to provide services on an hourly basis as per the attached fee schedule, **Attachment A**.

Services included in this contract include:

- Provide a topographic survey to identify the existing site conditions and features
- Provide design and construction documents for extension of Nugget Gulch Street design, water line extension, curb and gutter and sidewalk.
- Provide construction documents
- Cost Estimate, if required
- Specification and Bid documents

Specific exclusions include costs of geotechnical investigations, if required, and a full boundary survey of adjacent lots to establish property corners and lines.

Advanced Engineering and Surveying, LLC will complete the services detailed in the Scope of Work for a **maximum limiting amount not to exceed \$3,500.00**, plus applicable taxes, for Basic Services under this contract. This would be billed monthly at our hourly rates.

Direct costs, which are not included as a part of the contract amount, include mileage, geotechnical investigation if required, and printing costs. These would be billed at cost.

Additional costs, above the contract amount for Basic Services, include Construction Staking Services. Advanced Engineering and Surveying, LLC will complete Construction Staking of the Street Extension Project for a **maximum limiting amount not to exceed \$1,000.00**, plus applicable taxes. This would be billed monthly at our hourly rates.

Construction Staking services will include staking the street centerline, water line, curb and Gutter, sidewalk and all applicable appurtenances as required. All re-staking will be billed at our hourly rates above the contract amount.

For these services the OWNER shall make prompt monthly payments to the ENGINEER based on monthly invoices submitted by the ENGINEER.

Mutual Agreements


1. The ENGINEER will require written authorization from the OWNER to initiate work on the project.
2. The ENGINEER is employed to render a professional service only, and any payments made to him are compensation solely for such services as he may render and recommendations he may make in carrying out the work. The ENGINEER makes no warranty, either expressed or implied, as to his findings, opinions, recommendations, factual presentations, or professional advice other than that they were performed in accordance with the level of skill and judgment that meets the standard of care expected of the engineering profession.
3. The attached General Terms and Conditions numbered 1 through 16 are incorporated as part of this agreement.
4. The attached SCOPE OF SERVICES are incorporated as part of this agreement.
5. The AGREEMENT is in force upon signature by the OWNER and the ENGINEER and will remain in force unless terminated in writing by the OWNER or the ENGINEER.

Dated this 30 day of August, 2005.

City of Rapid City

\_\_\_\_\_  
Mayor

Advanced Engineering & Surveying, LLC

  
\_\_\_\_\_  
Ronald A. Bengs, PE  
Owner/Manager

Attest:

\_\_\_\_\_  
Finance Officer

**Scope of Services**  
**Nugget Gulch Street Extension**  
**Rapid City Project No.:**

<b>BASIC SERVICES</b>	<b>Included</b>	<b>Not Included</b>	<b>Remarks</b>
<b>Project Development Phase</b>			
1. Define scope of services	X		
2. Assist in development of schedule	X		
3. Assist in determining channels of communication	X		
4. Assist in determining drawing standards and specifications format		X	Rc Std Spec & dwg stds
5. Assist in determining number of meetings and number of site visits	X		
6. Negotiate fees and payment schedule	X		
7. Execute contract	X		
<b>Schematic Design Phase</b>			
1. Attend meetings	x		Max. of 1
2. Establish design criteria		X	RC Design Criteria
3. Prepare studies of alternative structural, mechanical, electrical systems		X	Max. of
4. Assist in selection of structural, mechanical, electrical systems		X	
5. Provide criteria for geotechnical consultant		X	
6. Assist in determining need for special studies		X	
<b>Design Development Phase</b>			
1. Attend meetings	X		Max. of 1
2. Prepare preliminary drawings	X		
3. Prepare preliminary design calculations for typical elements	X		
4. Prepare preliminary layout drawings	X		
5. Prepare typical detail sheets	X		
6. Identify pre-engineered elements		X	
7. Prepare or edit outline specifications	X		
8. Assist preparing preliminary opinion of cost of construction	X		
9. Review results of special studies		X	
10. Coordinate design with special design criteria		X	
11. Submit design development documentation for approval	X		

**Scope of Services**  
**Nugget Gulch Street Extension**  
**Rapid City Project No.:**

<b>BASIC SERVICES</b>	<b>Included</b>	<b>Not Included</b>	<b>Remarks</b>
<b>Contract Document Phase</b>			
1. Prepare design of primary system	X		
2. Designate elements to be designed by specialty engineer, and specify criteria for specialty engineers design of pre-engineered elements		X	
3. Review effect of secondary elements attached to primary system		X	
4. Attend meetings	1		Max. of 1
5. Assist in coordination with building code officials if applicable		X	
6. Complete calculations	X		
7. Complete drawings	X		
8. Prepare or edit specifications	X		
9. Assist in establishing testing and inspection requirements		X	
10. Perform checking and coordination of the design documents	X		
<b>Construction Administration Phase</b>			
1. Bidding and award	X		
A. Assist in evaluating bidder's qualifications	X		
B. Provide addenda and clarifications	X		
C. Assist in bid evaluation	X		
2. Pre-construction services		X	
A. Attend meetings		X	Max. of
B. Assist in establishing communications procedures		X	
C. Assist in establishing procedures for testing and inspections		X	
D. Assist in confirming submittal agency		X	
E. Assist in selection of testing procedures		X	
F. Advise client and contractor which design elements require construction observation		X	
G. Respond to owner and peer reviewer comments		X	
3. Submittal review		X	
A. Review special submittals for items designed by subconsultants		X	
B. Review submittals for pre-engineered elements		X	
4. Site visits		X	
A. Make site visits at intervals appropriate to the stage of construction		X	Max. of
B. Prepare site visit reports		X	
5. Materials testing and inspections		X	
A. Review testing and inspection reports		X	
B. Initiate appropriate action to those reports, if required		X	

## ADVANCED ENGINEERING General Terms and Conditions®

### 1. ABSENCE OF WARRANTY.

All services of Advanced Engineering ("ENGINEER") and its affiliates, subsidiaries, independent professional associates, consultants, and subcontractors required by the agreement between OWNER and ENGINEER ("Agreement") will be performed in a reasonable and prudent manner in accordance with generally accepted engineering practice. All estimates, recommendations, opinions, and decisions of ENGINEER will be made upon the basis of the information available to ENGINEER and ENGINEER's experience, technical qualifications, and professional judgment.

THERE ARE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES OR GUARANTEES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICE PERFORMED OR MATERIALS PROVIDED UNDER THE AGREEMENT.

### 2. INVOICES.

Invoices will be submitted periodically (customarily on a monthly basis), and are due and payable within 30 days of the invoice date. ~~Amounts not paid in 30 days are subject to finance charges at a rate of 1.5% per month, 18% per annum.~~ In addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services without liability until OWNER has paid in full all amounts due ENGINEER on account of services rendered and expenses incurred, including interest on past-due invoices. Payment of invoices is not subject to discounting by OWNER. Time is of the essence in payment of invoices, and timely payment is a material part of the consideration of the Agreement between ENGINEER and OWNER.

### 3. CHANGES OR DELAYS.

Unless the accompanying Proposal provides otherwise, the proposed fees constitute ENGINEER's estimate to perform the services required to complete the Project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the Project progresses, that facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that negotiation of change in scope and adjustment to the time of performance and compensation can be accomplished as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, whether or not changed by any order, an equitable adjustment shall be made, and the Agreement modified accordingly.

### 4. PAYMENT.

Where the method of payment under the Agreement is based upon cost reimbursement (e.g., hourly rate, time and materials, direct personnel expense, or per diem), the provisions of subparagraph a. shall apply in addition to the provisions of subparagraphs b. through d.

- a. All direct labor hours will be charged as actual time worked including all travel time associated with the project.
- b. Other direct costs, are payable at actual documented cost. This shall include such items as shipping, communication, printing and reproduction, supplies and equipment, and travel and subsistence. All miles associated with the project will be billed in accordance with the hourly rate schedule. The use of re-usable field and support equipment owned by ENGINEER will be billed at negotiated rates.
- c. When applicable, rental charges will be applied to cover the cost equipment, apparatus, instrumentation, or other technical machinery. When such charges are applicable, OWNER will be advised at the start of an assignment, task, or phase. Analyses performed in ENGINEER's or ENGINEER's subconsultant's laboratories will be billed on a unit-cost-per-analysis basis.

- d. Invoices based upon cost reimbursement will be submitted showing labor (hours worked) and total expense, but not actual documentation. If requested by OWNER, documentation will be supplied at the cost of providing such documentation, including labor and copying costs.

### 5. TERMINATION.

Either party may terminate the Agreement, in whole or in part, by giving seven days' written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where method of payment is "lump sum", the final invoice will include all services and expenses associated with the Project up to the effective date of termination. Where method of payment is based upon cost reimbursement, the final invoice will include all services and expenses associated with the Project up to the effective date of termination. In any event, an equitable adjustment shall be made to provide for termination settlement costs ENGINEER incurs relating to commitments that had become firm before termination, and for a reasonable profit for services performed.

### 6. LIMITATION OF LIABILITY.

Notwithstanding any other provision of these General Terms and Conditions, and unless otherwise subject to a greater limitation, ENGINEER's total liability to OWNER for any loss or damage, including but not limited to special and consequential damages arising out of or in connection with the performance of services or any other cause, including ENGINEER's professional negligent acts, errors, or omissions, shall not exceed the greater of \$50,000 or the total compensation received by ENGINEER hereunder, and OWNER hereby releases ENGINEER from any liability above such amount.

### 7. INSURANCE.

ENGINEER agrees to purchase, at its own expense, Workers' Compensation insurance and Comprehensive General Liability insurance and will, upon request, furnish insurance certificates to OWNER. ENGINEER agrees to indemnify OWNER for the claims covered by ENGINEER's insurance subject to the limitation of liability contained in Section 6. ENGINEER agrees to purchase additional insurance if requested by OWNER (presuming such insurance is reasonably available from carriers acceptable to ENGINEER), provided the costs for additional insurance are reimbursed by OWNER.

### 8. HAZARDOUS SUBSTANCE INDEMNIFICATION.

ENGINEER hereby states, and OWNER acknowledges, that neither ENGINEER nor ENGINEER's consultants have any professional liability (errors and omissions) or other insurance, and neither is able to reasonably obtain such insurance, for claims or claims expenses arising out of the performance of or failure to perform professional services, including but not limited to the preparation of reports, designs, drawings, and specifications, related to the investigation, detection, abatement, replacement, or removal of parts, materials, or processes containing asbestos or relating to the actual, alleged, or threatened discharge, dispersal, release or escape of pollutants (defined herein as any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste). Accordingly, OWNER hereby agrees to bring no claim for negligence, breach of contract, indemnity, or other action against ENGINEER, its principals, employees, agents, and consultants, if such claim in any way would relate to asbestos or pollutants in the Project. OWNER further agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless ENGINEER, its principals, employees, agents, and consultants from and against all claims, damages, losses, and expenses, direct or indirect, or consequential damages, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the performance of ENGINEER's services hereunder, or claims brought against ENGINEER by third parties and arising from ENGINEER's services or others' services and/or work related to asbestos and/or pollutant activities.

**9. PROJECT SITE.**

OWNER shall furnish or cause to be furnished to ENGINEER all documents and information known to OWNER that relate to the identity, location, quantity, nature, or characteristics of any hazardous waste at, on, or under the site. In addition, OWNER shall furnish such other reports, data, studies, plans, specifications, documents, and other information regarding surface and subsurface site conditions required by ENGINEER for proper performance of its services. ENGINEER shall be entitled to rely upon OWNER-provided documents and information in performing the services required under this Agreement; however, ENGINEER assumes no responsibility or liability for the accuracy or completeness of said documents and information. OWNER provided documents will remain the property of OWNER.

ENGINEER will not direct, supervise, or control the work of contractors or their subcontractors. ENGINEER's services will not include a review or evaluation of the contractor's (or subcontractor's) safety measures.

ENGINEER shall be responsible only for its activities and those of its employees on any site. Neither the professional activities nor the presence of ENGINEER, its employees, or its subcontractors on a site shall imply that ENGINEER controls the operations of others; nor shall this be construed to be an acceptance by ENGINEER of any responsibility for job-site safety.

**10. DISPOSAL OF CONTAMINATED MATERIAL.**

It is understood and agreed that ENGINEER is not, and has no responsibility as a handler, generator, operator, treater or storer, transporter, or disposer of hazardous or toxic substances found or identified at a site. OWNER shall undertake or arrange for the handling, removal, treatment, storage, transportation, and disposal of hazardous substances or constituents found or identified at a site.

**11. CONFIDENTIALITY.**

ENGINEER shall maintain as confidential and not disclose to others without OWNER's prior written consent all information obtained from OWNER that was not otherwise previously known to ENGINEER or in the public domain and is expressly designated by OWNER in writing to be "CONFIDENTIAL". The provisions of this paragraph shall not apply to information in whatever form that (1) is published or comes into the public domain through no fault of ENGINEER, (2) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (3) is required to be disclosed by law on order of a court, administrative agency, or other authority with proper jurisdiction.

OWNER agrees that ENGINEER may use and publish OWNER's name and a general description of ENGINEER's services with respect to the Project in describing ENGINEER's experience and qualifications to other clients or potential clients.

**12. RE-USE OF DOCUMENTS.**

All documents, including drawings and specification, prepared or furnished by ENGINEER (and ENGINEER's affiliates, subsidiaries, independent professional associates, consultants, and subcontractors) pursuant to this Agreement are instruments of service in respect of the Project, and ENGINEER shall retain an ownership and property interest therein, whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for re-use by OWNER or others on extensions of the Project or an any other project. Any re-use without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or ENGINEER's affiliates, subsidiaries, independent professional associates, consultants, and subcontractors with respect to any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting

therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

**13. CONTROLLING AGREEMENT.**

These General Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document regarding ENGINEER's services.

If any of these General Terms and Conditions are determined to be invalid or unenforceable in whole or part by a court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that as closely as possible expresses the intention of the stricken provision.

These General Terms and Conditions shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause.

**14. PROPRIETARY DATA.**

The technical and pricing information contained in the accompanying Proposal or Agreement is to be considered Confidential and Proprietary, and is not to be disclosed or otherwise made available to third parties without the express written consent of ENGINEER.

~~**15. MEDIATION- NO**~~

~~In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the OWNER and the ENGINEER agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation in accordance with the Construction Mediation rules of the American Arbitration Association unless the parties mutually agree otherwise. The OWNER and the ENGINEER further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.~~

**16. GOVERNING LAW.**

This Agreement is to be governed by and construed in accordance with the laws of the state of South Dakota.

**ADVANCED ENGINEERING & SURVEYING, LLC**  
**2005 FEE SCHEDULE**  
**ATTACHMENT A**

<u>Personnel</u>	<u>Hourly Rates</u>
Principal/Registered Engineer	\$80.00
Registered Land Surveyor	\$80.00
Engineer in Training (EIT)	\$50.00
Crew Chief	\$45.00
Clerical	\$40.00
Survey Assistant	\$40.00
2-Person Survey Crew	\$85.00
CADD Technician	\$50.00
Construction Observer	\$50.00
Other Professional Services	Cost
 <u>Expenses</u>	
Blue Printing	Cost
Copies	Cost
Car Mileage	\$0.35 / mile
Truck Mileage	\$0.45 / mile
Subsistence	Cost
Common Carrier	Cost
GPS Equipment	\$300.00 / day \$37.50 / hr.
4 Wheeler	\$35.00 / day