

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

Project Name & Number: East Rapid City Water Expansion, Project No. 13-2107,

CIP #: 50964

Project Description: Construction administration services

Consultant: Banner Associates, Inc

Original Contract Amount: \$298,986.00

Original Contract Date: April 6, 2015

Original Completion Date:

Addendum No:

Amendment Description:

Current Contract Amount: _____

Current Completion Date: _____

Change Requested: _____

New Contract Amount: _____ \$0.00

New Completion Date: _____

Funding Source This Request:

Amount	Dept.	Line Item	Fund	Comments
\$298,986.00	933	4223	602	Water Replacement / Improvements
\$298,986.00	Total			

Agreement Review & Approvals

[Signature] 3/2/15
 Project Manager Date

[Signature] 3/12/15
 Compliance Specialist Date

[Signature] 3/20/15
 City Attorney Date

[Signature] 3-12-15
 Division Manager Date

[Signature] 3-13-15
 Department Director Date

ROUTING INSTRUCTIONS

Route two originals of the Agreement for review and signatures.
 Finance Office - Retain one original
 Project Manager - Retain second original for delivery to Consultant
 cc: Public Works
 Engineering
 Project Manager

FINANCE OFFICE USE ONLY

(Note to Finance: Please write date of Agreement in appropriate space in the Agreement document)

Date	Initials	Approved
3/16/15	[Signature]	(Y) N
		(Y) N

**Agreement Between City of Rapid City and Banner Associates Inc. for
Construction Professional Services for East Rapid City Water Expansion Project,
Project No. 13-2107 / CIP No. 50964**

AGREEMENT made _____, 20____, between the City of Rapid City, SD (City) and Banner Associates Inc., (Engineer), located at 730 South Street, Ste. 201, Rapid City, SD 57701. City intends to obtain construction administration services for East Rapid City Water Expansion Project, Project No. 13-2107 / CIP No. 50964. 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.)
- 1.2.3 Conduct a location survey of the Project to the extent deemed necessary to provide adequate site information.
- 1.2.4 Prepare a report presenting the results of the study as outlined in the 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 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 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 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 \$298,986.00 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 90 days after construction is complete based on an award date of April 6, 2015.

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

BANNER ASSOCIATES INC.

DATE: _____

DATE: _____

ATTEST:

FINANCE OFFICER

Reviewed By:

Klare Schroeder

KLARE SCHROEDER, PROJECT MANAGER

DATE: 3/12/15

CITY'S DESIGNATED PROJECT
REPRESENTATIVE

ENGINEERING FIRM'S DESIGNATED
PROJECT REPRESENTATIVE

NAME Klare Schroeder, P.E.
PHONE 605-394-4154
EMAIL klare.schroeder@rcgov.org

NAME Sig Zvejnieks, P.E.
PHONE 605-343-0700
EMAIL _____



EXHIBIT A -- SCOPE OF SERVICES

Professional services consist of Task Four (4), and Five (5): Basic Construction Services, and Expanded Construction Services.

TASK 4 – BASIC CONSTRUCTION SERVICES:

This task consists of all services necessary for the administration of the Basic Construction Services of the project construction stage, and may include the following itemized services.

- 4.1 Arrange and conduct a Pre-Construction Conference including agenda. Record minutes and distribute to all attendees.
- 4.2 Provide clarification regarding drawing and specification questions.
- 4.3 Provide recommendations to address changed or unknown conditions that may appear during construction.
- 4.4 Review and take action on shop drawings, product submittals, test results, and other submittals.
- 4.5 Final Operation and Maintenance Manual (PRV Facility)

Deliver the following:

- Address City comments from the Task 1 City review(s) and finalize the Draft O&M Manual. The Draft O&M Manual should be now titled "*Enter Name of Facility* Operation and Maintenance Manual".
- It is expected that the O&M Manual will be finalized at the end of Construction Services.
- Provide Five (5) hard copies and a PDF version of the Final Operations and Maintenance Manual. PDF version shall provide the capability of selecting and going to different sections of the manual.

TASK 5 -- EXPANDED CONSTRUCTION SERVICES:

This task consists of all services necessary for the administration of the Expanded Construction Services of the project construction stage, and may include the following itemized services.

- 5.1 Mark removal limits of appropriate items.
- 5.2 Review Public Service Announcements (P.S.A.'s) for Engineering Services. Engineering Services will be responsible for distribution to all local media.
- 5.3 Appropriately notify affected Property Owners.

- 5.4 Arrange and conduct appropriate progress meetings. Record minutes and distribute to all attendees.
- 5.5 Provide daily on-site observation to assure that the methods and materials used by the contractor meet the intent of the plans and specifications. For buried installations the Consultant shall be on site all of the time the Contractor is installing these buried installations.
- 5.6 Prepare daily reports. A daily record of activity will be maintained by the inspector including weather conditions, construction progress, deviations from the plans and specifications, work performed, quantities installed and any other pertinent information. Such information shall be neatly and concisely entered into the City of Rapid City Project Inspector's Diary and Inspection quantity book. Submit detachable copies to Engineering Services on a weekly basis.
- 5.7 Perform stormwater inspections, , and keep the erosion and sediment control plans current as required by the ordinance regulating construction site runoff control, Chapter 8.46, and the Stormwater Quality Manual.
- 5.8 Provide soil compaction testing according to the Standard Specifications. All test results shall be submitted to the City of Rapid City at project completion.
- 5.9 Provide assurance testing (or witness Contractor testing) according to the Standard Specifications. All test results shall be submitted to the City of Rapid City at project completion.
- 5.10 Submit monthly pay request information.
- 5.11 Prepare change orders, and extra work orders for contractor and make recommendations for their approval or denial.
- 5.12 Prepare and submit project completion punch list items to the Contractor and Engineering Services and oversee its completion.
- 5.13 Prepare and submit City of Rapid City project "Construction Project Close-out Checklist" indicating compliance with Standard Specifications and acceptance of the various infrastructure components. The Consultant is responsible for coordinating completion of the checklist items with the Contractor.
- 5.14 Provide commissioning assistance for PRV Facility. Incorporate Final Record Print and calibration information. Finalize Operations and Maintenance Manual (for PRV Facility).
- 5.15 Following successful completion of construction, it is expected that the Engineer of Record will certify via a written and stamped statement that the project has been constructed in accordance with the drawings and specifications. This will signal start of the 2 year warranty period.
- 5.16 Prepare a letter to SDDENR notifying them of project completion, including Contractor stormwater NOTs (Notice of Termination(s)).

- 5.17 Verify Contractor's two-year warranty surety is provided to the City of Rapid City either within the performance bond or as a separate bond.
- 5.18 Assist the City with letter of project completion to Contractor verifying compliance with plans and specifications and start of warranty period.
- 5.19 Assist the City in addressing and communicating warranty items with the Contractor that may arise during the City's two year warranty period.

EXHIBIT "B"
Agreement for Basic and Enhanced Construction Phase Services

East Rapid City Water System Expansion
 Project No. 13-2107/CIP 50964

TASK I.D.	TASK OUTLINE	TASK SUBTOTAL
TASK 4: BASIC CONSTRUCTION SERVICES		
4.1	Prepare for, Coordinate & Conduct Pre-Construction Conference	\$1,962
4.2	Clarification regarding Plans & Specifications	\$258
4.3	Recommendations to Address changes or unknown conditions	\$1,614
4.4	Review & Return Shop Drawings	\$14,006
4.5	Deliver Final Operation and Maintenance Manual (PRV Facility)	\$1,006
Subtotal		\$18,846
TASK 5: EXPANDED CONSTRUCTION SERVICES		
5.1	Mark Removal Limits	\$582
5.2	Review PSA for Engineers services	\$312
5.3	Notify affected Property Owners	\$1,230
5.4	Prepare for, Coordinate & Conduct Progress Meetings (Bi-Monthly)	\$8,754
5.5	Daily On-Site Observation	\$191,376
5.6	Provide Daily Construction Observation reports	\$0
5.7	Perform storm water Inspections	\$2,772
5.8	Provide Soil Compaction Testing	\$0
5.9	Provide Assurance Testing (or witness Contractor testing)	\$1,335
5.10	Submit monthly pay requests	\$4,254
5.11	Assist with Preparation of Change Orders	\$1,404
5.12	Prepare and Submit Project Punchlist(s)	\$1,820
5.13	Prepare & Submit CORC "Construction Project Close-out Checklist(s)"	\$1,068
5.14	PRV Facility Commissioning Assistance, Final Record Prints and O&Ms	\$8,653
5.15	Prepare and Submit CORC Letter(s) of Certification	\$560
5.16	Prepare & Submit SDDENR/SRF Letter(s) of Certification	\$926
5.17	Verify Contractor's Two-Year Warranty Bond(s)	\$519
5.18	Certification Letter(s) at End of Construction	\$726
5.19	Assist City in addressing warranty items	\$465
Subtotal		\$226,756

Subconsultants (not included in above totals)		At Cost
1	American Engineering and Testing (Geotechnical)	\$26,457
2	Mettler-Sichmeller Engineering	\$8,466
Subconsultants Total		\$34,923
Task 4 & 5 Total		\$280,525
2017 Billing Rate and Reimbursable Adjustment		\$2,993
Banner Reimbursables (Estimated)		\$15,468
Total Fee w/Reimbursables and Subconsultants		\$298,986

EXHIBIT "C"**SCHEDULE OF LABOR RATES AND EXPENSES****East Rapid City Water System Expansion Project**

EMPLOYEE CLASSIFICATION	ID	2015 Rate/Hr	2016 Rate/Hr	2017 Rate/Hr
Sr. Project Manager ...	2057	\$162.00	\$167.00	\$172.00
	2087	\$129.00	\$133.00	\$137.00
Project Manager	2043	\$124.00	\$128.00	\$132.00
Project Engineer/ Designer	1758	\$100.00	\$103.00	\$106.00
	2021	\$ 87.00	\$ 90.00	\$ 93.00
Staff Engineer/ Designer	2138	\$ 71.00	\$ 73.00	\$ 75.00
	2140	\$ 66.00	\$ 68.00	\$ 70.00
	2142	\$ 78.00	\$ 80.00	\$ 82.00
	2147	\$ 63.00	\$ 65.00	\$ 67.00
CADD Manager	1701	\$ 84.00	\$ 87.00	\$ 90.00
Sr. CADD Technician	1658	\$ 76.00	\$ 78.00	\$ 80.00
CADD Technician	2025	\$ 66.00	\$ 68.00	\$ 70.00
CADD Drafter	2124	\$ 56.00	\$ 58.00	\$ 60.00
Survey Manager	2101	\$ 94.00	\$ 97.00	\$100.00
Administrative	2085	\$ 42.00	\$ 43.00	\$ 44.00
GIS Technician/Engineer	2143	\$ 51.00	\$ 60.00	\$ 62.00
Summer/Part-time/Temporary	2122	\$ 51.00	\$ 52.00	\$ 53.00

1. Transportation at \$0.55 per mile in addition to the above hourly rates.

2. Meals at State Rates.

3. Lodging at actual cost.

4. Reproduction:

Photocopy	\$0.07/Copy
Color Copies	0.30/Copy
Black & White Laser Prints.....	0.15/Sheet
Vellabond & Plain Paper Plots	0.50/Sq.Ft.
Mylar Film Copies and Plots	1.00/Sq.Ft.

5. Subcontracts..... Actual Cost

6. All other direct project expenses at actual cost of materials.



CONSULTANTS
□ ENVIRONMENTAL
□ GEOTECHNICAL
□ MATERIALS
□ FORENSICS

September 26, 2014

Banner Associates, Inc.
730 South Street, Suite 201
Rapid City, SD 57701

Attn: Mr. Sig Zvejnieks, P.E.

Subject: Cost Proposal - Materials Testing Services
East Rapid City Water system Expansion
Rapid City, South Dakota

Dear Sig:

INTRODUCTION

As requested, American Engineering Testing Inc. (AET) is pleased to provide this proposal for the Construction Observation and Testing services to be provided during construction of the proposed East Rapid City Water System Expansion project in Rapid City, South Dakota. The project is being split up into five packages, testing estimates are tabulated for each package.

SCOPE OF WORK

Based on the information provided, we understand the construction observation and testing services will include compaction testing of trench backfill for the full length of the alignments. We have assumed City of Rapid City compaction density specifications and testing frequencies will be observed. The five packages include; Package 1a); Mesa View and Valley View Subdivision Retrofits (9700 lineal feet), Package 1b); Radar Hill Road North (4000 lineal feet), Package 2); South of Highway 44 work (9100 lineal feet), Package 3) Radar Hill Road south (3600 lineal feet) and PRV Building Package 4) Anderson Road (5300 lineal feet).

FEES

The following provides an estimate of the services and fees as we understand the project(s) at this time. We have tried to be as realistic as possible in estimating testing quantities and time required. Quantities may change due to circumstances beyond our control such as weather or additional testing required or requested by the City, State, or Engineer. **Actual quantities may differ from the estimates.** You will be invoiced only for the work actually performed. If you (the client) or your representative requests AET to spend additional time beyond total estimated amount, the total estimated amount is changed accordingly and you will be invoiced for all additional services in accordance with the below units charges for this particular project.

Package 1a; Mesa View and Valley View Retrofits (9700 lin. ft.)

1. Testing of Soils

Field Technician	70 hrs @ \$55.00/hr	\$3,850.00
Proctors	5 ea @ \$140.00/ea.....	\$700.00
Mileage	1000 mi @ \$0.70/mile	<u>\$ 700.00</u>
	Subtotal	\$5,250.00

2. Administration, etc.

Engineer	7 hr @ \$95.00/hr.....	\$ 665.00
Clerical	8 hr @ \$44.00/hr	<u>\$ 352.00</u>
	Subtotal	\$1,017.00

Total estimate (Package 1a); \$6,267.00

Package 1b; Radar Hill Road North (4000 lin. ft.)

1. Testing of Soils

Field Technician	50 hrs @ \$55.00/hr	\$2,750.00
Proctors	3 ea @ \$140.00/ea.....	\$420.00
Mileage	700 mi @ \$0.70/mile	<u>\$ 490.00</u>
	Subtotal	\$3,660.00

2. Administration, etc.

Engineer	5 hr @ \$95.00/hr.....	\$ 475.00
Clerical	7 hr @ \$44.00/hr	<u>\$ 308.00</u>
	Subtotal	\$783.00

Total estimate (Package 1b); \$4,443.00

Package 2; South of Highway 44 (9100 lin. ft.)

1. Testing of Soils

Field Technician	70 hrs @ \$55.00/hr	\$3,850.00
Proctors	5 ea @ \$140.00/ea.....	\$700.00
Mileage	700 mi @ \$0.70/mile	<u>\$ 490.00</u>
	Subtotal	\$5,040.00

2. Administration, etc.

Engineer	6 hr @ \$95.00/hr.....	\$ 570.00
Clerical	8 hr @ \$44.00/hr	<u>\$ 352.00</u>
	Subtotal	\$922.00

Total estimate (Package 2); \$5,962.00

Package 3; PRV and South Radar Hill Road (3600 lin. ft.)

1. **Testing of Soils**

Field Technician	50 hrs @ \$55.00/hr	\$2,750.00
Proctors	3 ea @ \$140.00/ea.....	\$420.00
Mileage	800 mi @ \$0.70/mile	\$ 560.00
	Subtotal	\$3,730.00

2. **Administration, etc.**

Engineer	5 hr @ \$95.00/hr.....	\$ 475.00
Clerical	7 hr @ \$44.00/hr	\$ 308.00
	Subtotal	\$783.00

Total estimate (Package 3); \$4,513.00

Package 4; Anderson Road (5300 lin. ft.)

1. **Testing of Soils**

Field Technician	60 hrs @ \$55.00/hr	\$3,300.00
Proctors	4 ea @ \$140.00/ea.....	\$560.00
Mileage	700 mi @ \$0.70/mile	\$ 490.00
	Subtotal	\$4,350.00

2. **Administration, etc.**

Engineer	6 hr @ \$95.00/hr.....	\$ 570.00
Clerical	8 hr @ \$44.00/hr	\$ 352.00
	Subtotal	\$922.00

Total estimate (Package 4); \$5,272.00

Terms and Conditions

All AET Services are provided subject to the Terms and Conditions set forth in the enclosed Service Agreement—Terms and Conditions, which, upon acceptance of this proposal, are binding upon you as the Client requesting Services, and your successors, assignees, joint venturers and third-party beneficiaries. Please be advised that additional insured status is granted upon acceptance of the proposal.

Acceptance

AET requests written acceptance of this proposal in the Proposal Acceptance box below, but the following actions shall constitute your acceptance of this proposal together with the Terms and Conditions and Amendments: 1) issuing an authorizing purchase order for any of the Services described above, 2) authorizing AET's presence on site or 3) written or electronic notification for AET to proceed with any of the Services described in this proposal. Please indicate your acceptance of this proposal by signing below and returning a copy to us. When you accept this proposal, you represent that you are authorized to accept on behalf of the Client.

CLOSING

Thank you for the opportunity for American Engineering Testing, Inc. to provide this proposal for the construction observation and testing services for this project. If you have any questions please call our office at (605) 388-0029.

Sincerely,



Ray M. Atkins, P.E.
Construction Materials Engineer

ACCEPTANCE:

SIGNATURE: _____

COMPANY: _____

DATE: _____

SECTION 1 - RESPONSIBILITIES

1.1 – This Service Agreement – Terms and Conditions (“terms and conditions”) is applicable to all Services provided by American Engineering Testing, Inc. (AET). As used herein “Services” refer to the scope of Services described in the proposal submitted by AET to Client. The proposal, these terms and conditions and any appendices attached hereto shall comprise the Agreement between AET and Client for Services described in the proposal and are binding upon the Client, its successors, assignees, joint ventures and third-party beneficiaries. AET requests written acceptance of the Agreement, but the following actions shall also constitute Client’s acceptance of the Agreement: 1) issuing an authorizing purchase order for any of the Services, 2) authorizing AET’s presence on site, or 3) written or electronic notification for AET to proceed with any of the Services.

1.2 - Prior to AET performing Services, Client will provide AET with all information that may affect the cost, progress, safety and performance of the Services. This includes, but is not limited to, information on proposed and existing construction, all pertinent sections of contracts between Client and property owner, site safety plans or other documents which may control or affect AET’s Services. If new information becomes available during AET’s Services, Client will provide such information to AET in a timely manner. Failure of Client to timely notify AET of changes to the project including, but not limited to, location, elevation, loading, or configuration of the structure or improvement will constitute a release of any liability or indemnity obligations of AET for loss or damages related to such changes. Client will provide a representative for timely answers to project-related questions by AET.

1.3 – AET is responsible only for performance of the Services. AET will not be held responsible for work or omissions by Client or any other party working on the project. The Services do not include construction management, general contracting or surveying services. AET will not be responsible for directing or supervising the work of other parties, unless specifically authorized and agreed to in writing.

1.4 - Services performed by AET often include sampling at specific locations. Inherent with such sampling is variation of conditions between sampling locations. Client recognizes this uncertainty and the associated risks, and acknowledges that opinions developed by AET, based on samples so taken, are qualified to that extent.

1.5 - AET is not responsible for interpretations or modifications of AET’s recommendations by other persons.

1.6 - Should changed conditions be alleged, Client agrees to notify AET before evidence of alleged change is no longer accessible for evaluation.

1.7 – Pricing in the proposal assumes use of these terms and conditions. AET reserves the right to amend pricing if Client requests modifications to the Agreement or use of Client’s alternate contract format. Any contract amendments made after Client has authorized the Services shall be applicable only to Services performed after the effective date of such amendment. The proposal and these terms and conditions, including terms of payment, shall apply to all Services performed prior to the effective date of such amendment.

1.8 – The AET proposal accompanying these terms and conditions is valid for sixty (60) days after the proposal issuance date to the Client. Any attempt to authorize Services after the expiration date is subject to AET’s right to revise the proposal as necessary.

SECTION 2 - SITE ACCESS, RESTORATION AND UTILITIES

2.1 - Client will furnish AET safe and legal site access to the site.

2.2 - Client acknowledges that in the normal course of its Services AET may unavoidably alter existing site conditions or affect the environment in the area being studied. AET will take reasonable precautions to minimize alterations to the site or existing materials. Restoration of the site is the responsibility of the Client.

2.3 – If AET is required to locate public or private underground utilities or subsurface structures (“hidden features”) in its efforts to conform with reasonable standards of care, AET is entitled to rely on the location information provided by locating vendors. Client shall provide AET with any information available or reasonably obtainable to help prevent AET’s Services from encountering hidden features. AET shall bear no liability for damages or costs arising from encounters with hidden features.

SECTION 3 - SAFETY

3.1 - Client shall inform AET of any known or suspected hazardous materials or unsafe conditions at the site. If, during the course of AET’s Services, such materials or conditions are discovered, AET reserves the right to take measures to protect AET personnel and equipment or to immediately terminate Services. Client shall be responsible for payment of such additional protection costs.

3.2 - AET shall only be responsible for safety of AET employees and any contract labor or subconsultants working directly for AET.

SECTION 4 - SAMPLES

4.1 - Client shall inform AET of any known or suspected hazardous materials prior to submittal to AET. All samples obtained by or submitted to AET remain the property of the Client during and after the Services. Any known or suspected hazardous material samples will be returned to the Client at AET’s discretion.

4.2 - Non-hazardous samples will be held **forty-five (45)** days and then discarded unless, within **forty-five (45)** days of the report date, the Client requests in writing that AET store or ship the samples. Storage and shipping costs shall be borne solely by Client.

SECTION 5 - PROJECT RECORDS

The original project records prepared by AET will remain the property of AET. AET shall retain these original records for a minimum of three years following submission of the report, during which period the project records can be made available to Client at AET’s office at reasonable times.

SECTION 6 - STANDARD OF CARE

AET will perform its Services consistent with the level of care and skill normally performed by other firms in the profession at the time of the service and in the same geographic area, under similar budgetary constraints.

SECTION 7 - INSURANCE

AET maintains insurance with coverage and limits shown below. AET will furnish certificates of insurance to Client upon request.

7.1 – AET maintains the following insurance coverage and limits of liability:

Workers' Compensation	Statutory Limits
Employer's Liability	\$100,000 each accident
	\$500,000 disease policy limit
	\$100,000 disease each employee
Commercial General Liability	\$1,000,000 each occurrence
	\$1,000,000 aggregate
Automobile Liability	\$1,000,000 each accident
Professional Liability Insurance	\$1,000,000 per claim
	\$1,000,000 aggregate

7.2 - Commercial General Liability insurance will include coverage for Products/Completed Operations extending one (1) year after final acceptance of the Project by Owner, Property Damage including Completed Operations, Personal Injury, and Contractual Liability insurance applicable to AET's indemnity obligations under this Agreement.

7.3 - Automobile Liability insurance shall include coverage for all owned, hired and non-owned automobiles.

7.4 - Professional Liability Insurance is written on a claims-made basis and coverage will be maintained for one (1) year after final acceptance of the Project by Owner. Renewal policies during this period shall maintain the same retroactive date.

7.5 - To the extent permitted by applicable state law, and only upon Client's signing of the proposal and return of the same to AET, Client and Owner shall be named an "additional insured" on AET's Commercial General Liability Policy (Form CG D4 14 04 08, which includes blanket coverage for Products/Completed Operations and on a Primary and Non-Contributory basis). Any other endorsement, coverage or policy requirement shall result in additional charges.

7.6 - AET will maintain in effect all insurance coverage required by this Agreement at its sole expense, provided such insurance is reasonably available, with insurance carriers licensed to do business in the state in which the project is located and having a current A.M. Best rating of no less than A minus (A-). Such insurance shall provide for thirty (30) days prior written notice to Client for notice of cancellation or material limitations for the policy or ten (10) days' notice for non-payment of premium.

7.7 - AET reserves the right to charge Client for AET's costs for additional coverage requirements unknown on the date of the proposal, e.g., coverage limits or policy modification including waiver of subrogation, additional insured endorsements and other project specific requirements.

SECTION 8 - DELAYS

If delays to AET's Services are caused by Client or Owner, work of others, strikes, natural causes, weather, or other items beyond AET's control, a reasonable time extension for performance of work shall be granted, and AET shall receive an equitable fee adjustment.

SECTION 9 - PAYMENT, INTEREST AND BREACH

9.1 - Invoices are due net thirty (30) days. Client will inform AET of invoice questions or disagreements within fifteen (15) days of invoice date; unless so informed, invoices are deemed correct.

9.2 - In any case, Client shall pay for services when paid.

9.3 - Invoices remaining unpaid for sixty (60) days shall constitute a material breach of this Agreement, permitting AET, in its sole discretion and without limiting any other legal or equitable remedies for such breach, to terminate performance of this Agreement and be relieved of any associated duties to the Client or other persons. Further, AET may withhold from Client data and reports in AET's possession. If Client fails to cure such breach, all reports associated with the unpaid invoices shall immediately upon demand be returned the same to AET and Client may neither use nor rely upon such reports or the Services.

9.4. Delete

SECTION 10 - MEDIATION

10.1 - Except for enforcement of AET's rights to payment for Services rendered or to assert and/or enforce its lien rights, including without limitation assertion and enforcement of mechanic's lien rights and foreclosure of the same, Client and AET agree that any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party; provided however that if either party fails to respond to a request for mediation within sixty (60) days, the party requesting mediation may without further notice, proceed to arbitration or the institution of legal or equitable proceedings.

10.2 - Mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association. Request for mediation shall be in writing and the parties shall share the mediator's fee and any filing fees equally. The mediator shall be acceptable to both parties and shall have experience in commercial construction matters.

SECTION 11 - LITIGATION REIMBURSEMENT

Delete

SECTION 12 - MUTUAL INDEMNIFICATION

12.1 – Subject to the limitations contained in Sections 13 and 14, AET agrees to indemnify Client from and against damages and costs to the extent caused by AET's intentional acts or negligent performance of the Services.

12.2 - Client agrees to indemnify AET from and against damages and costs to the extent caused by the intentional acts or negligence of the Client, Owner, Client's contractors and subcontractors or other third parties.

12.3 - If Client has an indemnity agreement with other persons or entities relating to the project for which AET's Services are performed, the Client shall include AET as a beneficiary.

12.4 - AET's indemnification to the Client, including any indemnity required or implied by law, is limited solely to losses or damages caused by its failure to meet the standard of care and only to the extent of its negligence or intentional acts.

SECTION 13- WAIVER OF CONSEQUENTIAL DAMAGES

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES INCURRED EVEN IF THE POSSIBILITY OF SUCH DAMAGES WAS FORESEEABLE. CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO LOSS OF USE AND LOSS OF INCOME OR PROFIT.

SECTION 14 - LIMITATION OF LIABILITY

Delete

SECTION 15 – UNIONIZATION

AET reserves the right to negotiate an appropriate fee increase or to terminate its contract on three (3) days written notice to Client without incurring penalties or costs from Client, Owner and their successors, assignees, joint-venturers, contractors and subcontractors, or any other parties involved with the project for claims, liabilities, damages or consequential damages, directly or indirectly related to AET being required to provide unionized personnel on the project. Reservation of this right on the part of AET represents neither approval nor disapproval of unions in general or the use of collective bargaining agreements.

SECTION 16 - POSTING OF NOTICES ON EMPLOYEE RIGHTS

Effective June 21, 2010, prime contracts with a value of \$100,000 or more and signed by federal contractors on projects with any agency of the United States government must comply with 29 CFR Part 471, which requires physical posting of a notice to employees of their rights under Federal labor laws. The required notice may be found at 29 Code of Federal Regulations Part 471, Appendix A to Subpart A. The regulation also has a "flow-down" requirement for subcontractors under the prime agreement for subcontracts with a value of \$10,000 or more. AET requires strict compliance of its subcontractors working on federal contracts subject to this regulation. The regulation has specific requirements for location of posting and language(s) for the poster.

SECTION 17 - TERMINATION

After seven (7) days written notice, either party may elect to terminate this Agreement for justifiable reasons. In this event, the Client shall pay AET for all Services performed, including demobilization and reporting costs to complete the file.

SECTION 18 - SEVERABILITY

Any provisions of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, Client and AET will in good faith attempt to replace an 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.

SECTION 19 - GOVERNING LAW

This Agreement shall be construed in accordance with the Laws of the State of South Dakota without regard to its conflicts of law provisions.

SECTION 20 - ENTIRE AGREEMENT

This Agreement, including these terms and conditions and attached proposal and appendices, is the entire agreement between AET and Client. Regardless of method of acceptance of this Agreement by the Client, this Agreement supersedes any previous written or oral agreements, including purchase/work orders or other Client agreements submitted to AET after the start of our Services. Any modifications to this Agreement must be mutually acceptable to both parties and accepted in writing. No considerations will be given to revisions to AET's terms and conditions or alternate contract format submitted by the Client as a condition for payment of AET's accrued Services.

To the extent the terms of the Prime Consultant's Agreement (copy available) apply to the Geotechnical Engineer's (AET) services, the Geotechnical Engineer (AET) assumes toward the Engineer (Client) all the same obligations, duties and responsibilities that the Engineer has assumed toward the Owner (Engineer's Client) in the Prime Agreement.

February 16, 2015

Chad Bachman, P.E.
Banner Associates, Inc.
409 22nd Ave So
PO Box 298
Brookings, SD 57006

Re: Professional Mechanical and Electrical Engineering Services for Rapid City PRV Station.

Dear Mr. Bachman:

The proposed engineering services for the Rapid City PRV Station project would include the following construction related items:

Preliminary Design Phase: \$3,894

1. Provide a narrative on a conceptual design report for this facility.
2. Provide a 35% submittal – Preliminary design of the facility and attend a review meeting with the City.

Final Design Phase: \$7,230

3. Provide 100 % submittal – final design on the facility and attend a review meeting with the City via conference call.
4. Coordinate electrical and mechanical connections to utility.

Bidding Phase: \$3,760

1. Answer potential bidder questions, and assist with any addendum items.
2. Attend pre-construction conference.

Basic Construction Phase: \$3,386

1. Be available to answer any questions during construction.
2. Provide assistance with change orders, field orders, etc...
3. Review shop drawings.

Enhanced Construction Services: \$5,080

4. Attend a substantial completion walk through on the project, and generate a punch list.
5. Assist with O&M manuals and final paperwork.
6. Incorporate as-built information into your plans and distribute.

The engineering fee for the Rapid City PRV Station shall be bill hourly not to exceed the amount of \$23,350.

If this meets with your approval, I will be happy to begin work with a signed copy of this letter. Thank you for the opportunity to provide this proposal.

Sincerely,

Accepted:

Handwritten signature of Larry M. Mettler in black ink.

Larry M. Mettler, P.E.
Mettler Sichmeller Engineering

(name, title, date)