



Banner Associates, Inc.
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Rapid City, SD 57701
Tel 605.692.6342
Toll Free 855.323.6342
www.bannerassociates.com

January 4, 2024

Mr. Lynx Bettelyoun
Oglala Lakota County Highway Department
PO Box 208
Batesland, SD 57716

Re: Letter of Contract - Engineering Services
Oglala Lakota County Roads 6 & 27 Gravel Surfacing
Oglala Lakota County, South Dakota

Dear Mr. Bettelyoun:

Banner Associates, Inc. ("Banner") is pleased to submit this letter of contract for Engineering Services for preparing bidding documents and providing bidding services for the Oglala Lakota County Roads 6 & 27 Gravel Surfacing project.

Engineering Scope of Services:

1. Prepare Bid Documents which will include:
 - a. Title Sheet
 - b. Estimate of Quantities and Notes
 - c. Specifications
 - d. Front End Documents (EJCDC Format) including
 - i. Advertisement
 - ii. Instructions to Bidders
 - iii. Payment and Performance Bond
 - iv. Bid Form
 - v. Notice of Award
 - vi. Agreement
 - vii. Notice to Proceed
 - viii. Certificate of Substantial Completion
 - ix. Waiver and Release of Lien
 - x. Standard General Conditions
 - xi. Supplementary Conditions of the Contract
 - xii. Quality Assurance Testing Agreement
2. Bidding Services which will include:
 - a. Preparing advertisement
 - i. Banner will submit advertisement to Highway Superintendent for publishing in official newspaper.
 - ii. Banner will advertise the project on the Banner Associates website.
 - iii. Banner will distribute to other potential bidders.
 - b. Bid document production and distribution
 - c. Answer bidder questions
 - d. Prepare addenda if necessary



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- e. Attend bid opening at Fall River County Courthouse via Teams or Zoom
- f. Review bids and Prepare bid tabulation (County Commission will award project with recommendation from Highway Superintendent)
3. Prepare Contract, Notice of Award, and Notice to Proceed
4. Prepare Certificate of Substantial Completion upon approval of the Highway Superintendent

Submittals:

Banner proposes to provide a bidding document draft for review by the Highway Superintendent in electronic form. Upon receipt of comments, Banner will address comments and provide final bidding documents in electronic form.

Exclusions:

Based on our understanding of the project, the following items are excluded from our Scope of Services:

- Progress Meetings;
- Geotechnical Investigation;
- Hazardous Materials;
- Haul Road Agreements;
- Aggregate Testing;
- Construction Staking, and;
- Construction Administration Services including:
 - o Attendance and administration of pre-construction meeting;
 - o Pay Request preparation;
 - o Change order preparation; and
 - o Punchlist preparation and final walk-through.

Client Obligations:

- Owner supplied data or documents
- Timely review of bidding documents
- Plan holders list (Banner will add additional plan holders at discretion of Highway Superintendent)

Engineering Services Compensation:

We are proposing to complete the above-described Engineering Services for the hourly not to exceed amount including reimbursable expenses of \$6,000 plus applicable taxes. These fees do not include cost for any permits required by agencies for review. Any work that falls outside this scope will be billed separately based on our hourly rates in accordance with the attached fee schedule.

Time Schedule of Work:

It is our understanding the ultimate schedule is to bid the project in 2024 for construction to be completed by October of 2024. Banner's schedule will be influenced by the following:

1. Timely review by the Owner

This Letter of Contract incorporates and includes Banner's Schedule of Labor Rates and Expenses and General Conditions.



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SCHEDULE OF LABOR RATES AND EXPENSES

January 2023

Administrative	\$65.00 to \$175.00/Hour
Surveying/Geomatics	\$75.00 to \$160.00/Hour
Engineering Technician.....	\$70.00 to \$125.00/Hour
Environmental Scientist.....	\$85.00 to \$150.00/Hour
Staff Engineer	\$95.00 to \$110.00/Hour
Project Engineer	\$110.00 to \$170.00/Hour
Project Manager	\$130.00 to \$250.00/Hour

1. Meals at State Rates.
2. Lodging at actual cost.
3. Reimbursables:

Mileage.....	\$0.70/Mile
Photocopy	0.07/Copy
Black & White 11x17 Laser Prints.....	0.14/Sheet
4. All other direct project expenses at actual cost of materials.

Rates are subject to change annually.



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If you have any questions regarding this contract, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Richard Uckert". The signature is written in a cursive, flowing style.

Richard Uckert, PE
Project Manager

Enclosure:

1. Schedule of Labor Rates/General Conditions

ACKNOWLEDGMENT OF ACCEPTANCE

Accepted this _____ day of _____

Client: _____

Entity: Oglala Lakota County

GENERAL CONDITIONS

Agreement. The entire Agreement between the Client and Banner shall consist of the Letter of Contract, the Schedule of Labor Rates and Expenses and these General Conditions ("Agreement"). The Agreement represents the entire, integrated Agreement and supersedes all other negotiations, representations or agreements, either written or oral. The Agreement may be amended only by written agreement of the Parties. Banner's services are limited to those specifically identified in the Agreement.

Authorization to Proceed. Execution of this Agreement by the Client will be authorization for Banner to proceed with the Services, unless otherwise provided in the Agreement.

Cost Opinions. Any opinion of cost provided by Banner will be on a basis of experience and judgment, but, since construction costs are dependent upon many market and other conditions over which Banner has no control, Banner shall not be responsible for variations between actual costs and any opinion of cost.

Standard of Care. In the performance of its professional services, Banner will use that degree of care and skill ordinarily exercised by similarly situated professionals under like and similar circumstances. No express or implied warranties are applicable to, or provided with, any of Banner's services

Payment. Monthly invoices will include charges incurred during the preceding month. Payment of the invoice is due within thirty (30) days following the date of the invoice. A charge of one and one-half percent (1 1/2%) per month, or the maximum legal rate for commercial accounts, whichever is less, will be charged for late payment. Client shall be responsible for reimbursing Banner for all costs incurred in collecting delinquent amounts owed by Client.

Termination. This Agreement may be terminated for convenience upon 30 days' written notice, or for cause, if either party fails to substantially perform as required under the Agreement through no fault of the other party and does not commence to diligently correct such nonperformance within 5 days of receipt of written notice. Upon termination, Banner will be paid for all services authorized and performed up to the termination date plus reasonable termination expenses incurred by Banner as a result of the termination.. This Agreement will otherwise terminate upon completion of all applicable requirements of the Agreement. The Indemnity and Limitation of Liability Provision shall survive any termination of this Agreement.

Indemnity and Limitation of Liability. The Client agrees to defend, indemnify and hold Banner and its professionals, officers, employees representatives and agents harmless from and against all claims, costs, expenses (including attorney's fees and expenses) asserted against Banner in connection with the Project, including, but not limited to claims involving hazardous substances, except to the extent caused by the sole negligence of Banner. Banner's liability to the Client for losses, damages or injuries arising out of the performance of Banner's services or the Project will be limited to a sum not to exceed the greater of \$50,000 or Banner's fee (to a maximum of \$1,000,000 or the amount of any insurance available to cover such liability if less than \$1,000,000).

Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

Hazardous Substances. Unless specifically stated in this Agreement, Banner shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site

Interpretation. This Agreement and any claims or disputes arising out of, or relating to, the Agreement shall be governed by the laws of the State of South Dakota, other than any choice of law provisions under South Dakota law.

No Third Party Beneficiaries. This Agreement is for the sole benefit of Client and Banner and nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, any third party against either Client or Banner.

Responsibility for Construction. The Client agrees that in accordance with generally accepted construction industry standards, Banner shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, since they are solely the responsibility of the contractor, and Banner shall not have control over or charge of, and shall not be responsible for, acts or omissions of the contractor, including, but not limited to the contractor's failure to perform its work in accordance with industry standards and the requirements of any plans and specifications.

