"OWNER COPY"

BANNER
Engineering | Architecture | Surveying
Banner Associates, Inc. | 409 22nd Ave So | PO Box 298
Brookings, South Dakota 57006 | 605.692.6342
www.bannerassociates.com

October 17, 2016

Mr. Dick Birk
Brookings County Highway Superintendent
422 Western Avenue
Brookings, SD 57006

Re: Letter of Contract - Engineering Services
Develop Brookings County Asphalt Ordinance for
Mill and Overlay Projects

Dear Mr. Birk:

Banner Associates, Inc. ("Banner") is pleased to submit this letter of contract for Engineering Services for developing a Brookings County Asphalt Ordinance for use on mill and asphalt overlay projects within Brookings County,

Engineering Scope of Services:

1. Develop Asphalt Ordinance:
    - Draft traffic control requirements;
    - Draft cold mill requirements;
    - Draft asphalt overlay requirements;
        - Includes PG Binder selection;
    - Draft pavement marking requirements;
    - Draft warranty requirements.
2. Collaborate with other Counties:
    - Banner will discuss with nearby Counties for their requirements for mill and overlay projects:
        i. Codington County
        ii. Kingsbury County
        iii. Deuel County

Submittals:
These services include providing a working ordinance that will allow Brookings County leverage to accept or reject any or all of the work performed on a mill and overlay project.

Note: This will be a "working" document that most likely require several revisions prior to adapting as an Ordinance.

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

- Micro-milling requirements;
- Smoothness requirements;
- Asphalt Class requirements;
  - Marshall Mix or,
  - Gyratory Mix
- Construction Administration Services.

Client Obligations:

- Provide review comments to draft ordinance

Engineering Services Compensation:
We are proposing to complete the above described Engineering Services for the hourly (not to exceed) amount including reimbursable expenses of $8,000 plus applicable taxes. 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 develop a working Ordinance in time for the 2017 bid letting season (January/February time frame).

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

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

Sincerely,

Brad Wermers, PE
Senior Vice President
Banner Associates, Inc.

Scott A. Mohror, PE
Project Manager
Banner Associates, Inc.

Enclosure:

1. Schedule of Labor Rates/General Conditions

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ACKNOWLEDGMENT OF ACCEPTANCE

Accepted this _____ day of _____

Client:_____

Business: Brookings 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.

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# SCHEDULE OF LABOR RATES AND EXPENSES

## January, 2016

| | |
|---|---|
| **Administrative** | $40.00 to $79.00/Hour |
| **Surveying/Geomatics** | $50.00 to $100.00/Hour |
| **CADD Drafting** | $60.00 to $90.00/Hour |
| **Staff Engineer and Architect** | $70.00 to $85.00/Hour |
| **Project Engineer and Architect** | $85.00 to $105.00/Hour |
| **Project Manager** | $105.00 to $135.00/Hour |
| **Sr. Project Manager** | $135.00 to $180.00/Hour |

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

| | |
|---|---|
| Mileage | $0.55/Mile |
| Photocopy | 0.07/Copy |
| Color Copies | 0.30/Copy |
| Black & White 11x17 Laser Prints | 0.15/Sheet |
| Vellabond & Plain Paper Plots | 0.70/Sq.Ft. |
| Mylar Film Copies and Plots | 1.25/Sq.Ft. |

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

**We reserve the right to adjust the rates.**