



**BOARD OF COMMISSIONERS  
AGENDA**

**JANUARY 31, 2022**

**5:30PM – COMMISSION ROOM – 116 W CENTER ST**

**Please join the Zoom meeting from your computer, tablet or smartphone.**

<https://us06web.zoom.us/j/88666623209>

**You can also dial in using your phone.**

**+1 312 626 6799**

**Meeting ID: 886 6662 3209**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**ADOPT AGENDA**

**APPEARANCES/ACKNOWLEDGEMENTS**

**CONSENT CALENDAR**

- 1) Minutes - January 24, 2022
- 2) Bills for Ratification - January 21, 2022
- 3) Claims for Approval - February 2, 2022
- 4) Personnel
- 5) Authorize Mayor to Sign Final Closeout - AIP 3-46-029-020-2021 - South GA Apron Expansion Construction

**UNFINISHED BUSINESS**

**NEW BUSINESS**

- 1) COVID-19 Update and Discussion
- 2) Adopt Resolution No. 2022-04 - Amend Established Employee Compensation for 2022
- 3) Authorize Mayor to Sign Professional Services Agreement with Banner Associates, Inc  
Park Creek Walls Site 2, 4<sup>th</sup> St and 5<sup>th</sup> St Bridge Improvements
- 4) 2021 Creek Maintenance Overview

**PUBLIC COMMENT**

**ANNOUNCEMENTS**

**EXECUTIVE SESSION**

- 1) SDCL 1-25-2(1)

**ADJOURN**

Supplementary agenda information may be accessed at [www.cityofmadisonsd.com](http://www.cityofmadisonsd.com)

**AGENDAS – CITY COMMISSION**

**If special accommodations are necessary to attend any Board of Commissioners meeting, please contact the Finance Office at (605) 256-7500 at least 24 hours before meeting time. All attempts shall be made to accommodate a request.**

**CITY OF MADISON  
BOARD OF COMMISSIONERS PROCEEDINGS  
MADISON, SD 57042**

January 24, 2022  
Regular

The Board of Commissioners of the City of Madison met in regular session at 5:30pm on the 24<sup>th</sup> day of January with the following members present on roll call: Mayor Marshall Dennert and Commissioners Jeremiah Corbin, Kelly Dybdahl, Adam Shaw and Jerae Wire.

The Pledge of Allegiance was recited.

Motion by Commissioner Shaw to adopt the January 24<sup>th</sup> agenda. Motion seconded by Commissioner Dybdahl. Motion carried unanimously.

Motion by Commissioner Corbin, seconded by Commissioner Wire, to approve the following items on the consent calendar: Minutes - January 18, 2022, Bills for Ratification - January 5, 2022, Claims for Approval - January 26, 2022, Approve Application for Property Tax Abatement 2022-01, 2022-02, 2022-03. Motion carried unanimously.

Bills for Ratification - January 5, 2022:

First Bank & Trust \*FY\*Bond Interest 20200501 11,297.92; Jencks & Jencks PC January Services 5,500.00; Mama's Maid Service \*F\*Cleaning Services 1,416.25.

Claims for Approval - January 26, 2022:

AmercInn Fort Pierre ATC Conference Lodging 231.00; Appeara Mat Rentals 263.53; AT & T Mobility \*FY\*Monthly Service 1,350.04; Axon Enterprises Inc Fleet 2 Unlimited/Dynamic 3,640.29; Banner Associates Inc NW Madison San Sewer Study 3,745.50; Beckman/Ronald J Refund After Deposit 162.74; Blackstone Publishing CD's 202.34; Border States Electric Supply 4SQ Boxes 110.56; Builders FirstSource Concrete Mix 75.09; Christensen Distributing Brake Cleaner 89.67; Classic Convenience Inc Fuel 273.00; Complete Septic Service LLC Septic Tank Evac 300.00; Core & Main GP LLC End Caps 866.64; DGR Engineering 2022 Elec Conversion 4,594.80; F & M Coop Oil Co Fuel/Tire Repair 215.45; Fastenal Co Bridge Railings 97.21; Fritzler/Edward A Refund After Deposit 6.85; Frontier Precision Inc Trimble Subscription 1,650.00; Fulton/Jessica R Refund After Deposit 98.47; Goth Electric \*FY\*Heater Repair 380.00; Grey House Publishing Inc Financial Ratings 1,495.00; Halme Inc Water Sys Imp Phase 2A-6 49,378.09; Hawkins Inc \*FY\* Chemicals 1,692.90; Hillyard Inc Pocket Mop 50.46; Howe Inc Replace Check Assembly 1,120.81; Infotech Solutions Llc Monthly Inv/Computers 8,761.31; Ingram Co Books 51.88; Johnstone Supply Armory Boiler Treatment 235.64; Keltek Incorporated \*FY\*Surface Mount Int Light 122.64; Kieslers Police Supply Inc Glock 22 Gen5 S&W Pistol 429.00; KLJ Engineering LLC Apron Expansion Const 3,056.62; Lake Area Improvement Corp Qtr4 Sales Tax Rebate 2021 39,058.36; Lake County Treasurer 2021 Real Estate Taxes 514.23; Lawrence/Bradley A ATC Conference Meals 42.00; Lookout Books \*FY\*Books 204.58; Madison Ace Hardware Cleaners/Tube Braid 40.15; Micromarketing LLC CD's/DVD's 1,085.82; Montgomery/John P Refund After Deposit 50.69; Nighbert/Richard J ATC Conference Meals 34.00; Northwestern Energy \*FY\*Utilities 1,870.21; OCLC Inc Cataloging/Metadata 368.00; Office Peeps Inc Toner/Paper/Paper Towels 423.10; One Source \*FY\*Background Checks 108.00; Porta Pros Inc Toilet Rental-Memorial 170.00; Prostrollo Auto Plaza Co Mount/Balance Tires 84.00; Resykle LLC Welding Gas 73.00; Running Supply Inc Ice Melt/Saw Blade/Gloves/Misc 132.61; Rural Electric Supply Coop Guy Grip Deadends 148.75; SDML Workers Compensation Fund 2022 Renewal 72,592.00; State of SD OEM FEMA - Olinger 125,894.35; Streichers Inc Tactical Vest 1,018.98; Stuart Irby Tool Co Lineman Gloves Class 2 270.83; Sturdevants Madison Inc Batteries/Filters/Carbide Cutter 787.19; Timmer Supply Co 31MM Cartridge Assy 26.46; TwoTwo/Robert W Refund After Deposit 58.38; Vast Broadband Fire Dept Internet 44.95; Vold/Alice Refund EFT Draft ASP/Membership 261.95; Wallenstein/Braedon Refund After Deposit 66.00; Wheelco Brake & Supply Inc Shop Towels/Filters/Fuel Power 200.92; 44 Interactive Web Hosting 2022 400.00.

Motion by Commissioner Shaw, seconded by Commissioner Corbin to authorize the Mayor to Sign a Letter of Contract with Banner Associates for the West Ave Sanitary Sewer Improvement. This contract is to provide final designs and specifications as well as construction administration on West Ave between NW 6<sup>th</sup> Street and NW 7<sup>th</sup> Street. Final plans are to be submitted by April 1, 2022. Total cost is \$46,900 to be paid on an hourly not to exceed basis. Motion carried unanimously.

City Administrator Berreth asked that a COVID-19 Update and Discussion be included on the agenda for the next couple weeks. No changes to policies at this time. Updates and discussions will be reevaluated each week.

Motion by Commissioner Dybdahl, seconded by Commissioner Shaw, to adopt Resolution No. 2022-03 - Amend Established Employee Compensation for 2022. Said Resolution changes the title of Human Resources Assistant to Human Resources Specialist. Motion carried unanimously.

Motion by Commissioner Shaw, seconded by Commissioner Wire, to approve the City of Madison Reserve Policy. Discussion was held that a resolution would be forth-coming to outline reserve requirements for the Water and Sewer funds. Motion carried unanimously.

Nominating Petitions are available Friday January 28<sup>th</sup> for 1 open Mayor position. Petitions must be returned by Friday February 25<sup>th</sup> at 5:00pm.

Motion by Commissioner Shaw, seconded by Commissioner Dybdahl, to adjourn. Motion carried unanimously.

The Board of Commissioners adjourned at 5:48pm.

/s/Sonya Wilt  
Finance Officer

Published once at the approximate cost of \$\_\_.

CITY OF MADISON  
PERSONNEL  
JANUARY 2022

| NAME              | EFFECTIVE<br>DATE | PRESENT<br>STATUS | RECOMMENDED<br>STATUS | PRESENT<br>RATE/SALARY | RECOMMENDED<br>RATE/SALARY         | POSITION                     |
|-------------------|-------------------|-------------------|-----------------------|------------------------|------------------------------------|------------------------------|
| Limmer, Jayson    | 9/8/2021          | FT                | FT                    | \$39.14                | 5% increase of rate paid in year   | Journey Lineman              |
| Nelson, Teresa    | 9/8/2021          | FT                | FT                    | \$60,132.80            | 5% increase of salary paid in year | Utility Services Coordinator |
| Moeller, Mercedes | 1/10/2022         | PT<20             | PT<20                 | \$9.95                 | \$9.95                             | Recreation Assistant         |
| Schwebach, Shania | 1/25/2022         | NA                | PT<20                 | NA                     | \$10.05                            | Fitness Assistant            |
| Schwebach, Shania | 1/25/2022         | NA                | PT<20                 | NA                     | \$9.95                             | Recreation Assistant         |
| Hastings, Seth    | 1/27/2022         | NA                | PT<20                 | NA                     | \$9.95                             | Recreation Assistant         |
| Bartscher, Josie  | 2/1/2022          | NA                | PT<20                 | NA                     | \$9.95                             | Afterschool Assistant        |
| Carlson, Nicholas | 2/1/2022          | NA                | PT<20                 | NA                     | \$9.95                             | Afterschool Assistant        |
| Argo, Melanie     | 1/31/2022         | FT                | FT                    | \$22.93                | 5% increase of rate paid in year   | Systems Librarian            |
| Martin, Lisa      | 1/31/2022         | FT                | FT                    | \$22.25                | 5% increase of rate paid in year   | Children's Librarian         |

## G. CONCLUSION

### Final Cost Review

| Project Review and Certification:                                                                                                                                                                                                                                                                                                                                                                            |                                | Dated<br>(mm/dd/yy) | Yes                                 | No                                  | N/A                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|---------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| 1. <b>Conditions:</b> All conditions of the grant have been conformed to.                                                                                                                                                                                                                                                                                                                                    |                                | 11/01/21            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 2. <b>Construction:</b> All construction work was performed in full conformity with project plans and specifications.                                                                                                                                                                                                                                                                                        |                                | 11/01/21            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 3. <b>Costs:</b> All costs identified in this report have been paid to the respective vendors/contractors.                                                                                                                                                                                                                                                                                                   |                                | 11/01/21            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 4. <b>Program Income:</b> Liquidated damages were not assessed.                                                                                                                                                                                                                                                                                                                                              |                                | 11/01/21            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 5. <b>Final Inspection:</b> The Sponsor has completed the final inspection and verified that all punch list items have been addressed.                                                                                                                                                                                                                                                                       |                                | 11/01/21            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Documents Required for All Grants:                                                                                                                                                                                                                                                                                                                                                                           |                                | Dated<br>(mm/dd/yy) | Yes                                 | No                                  | N/A                                 |
| 6. <b>Amendment Request:</b> Request in accordance with Section 7 of the AIP Handbook.                                                                                                                                                                                                                                                                                                                       |                                |                     | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 7. <b>FPSW:</b> Final Payment Summary Request Worksheet has been submitted.                                                                                                                                                                                                                                                                                                                                  |                                | 01/27/22            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 8. <b>SF-271:</b> Final Pay Request SF-271 Form has been submitted. (or SF-270 as appropriate)                                                                                                                                                                                                                                                                                                               |                                |                     | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 9. <b>SF-425:</b> Final Pay Request SF-425 Form has been submitted.                                                                                                                                                                                                                                                                                                                                          |                                |                     | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 10. <b>Final Invoices:</b> Attach final invoices as appropriate or required by FAA ADO.                                                                                                                                                                                                                                                                                                                      |                                | 01/27/22            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Documents Conditional on Grant Type:                                                                                                                                                                                                                                                                                                                                                                         |                                | Dated<br>(mm/dd/yy) | Yes                                 | No                                  | N/A                                 |
| 11. <b>ALP:</b> The As-Built, Revised, or Updated ALP has been submitted to the FAA.                                                                                                                                                                                                                                                                                                                         |                                |                     | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 12. <b>Equipment:</b> The Inventory of Non-Expendable Personal Property document(s) is/are attached.                                                                                                                                                                                                                                                                                                         |                                |                     | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 13. <b>As-Built Construction Drawings</b> are on file with the Sponsor or submitted as required by ADO.                                                                                                                                                                                                                                                                                                      |                                | 01/27/22            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 14. <b>Exhibit "A"</b> Property Map has been submitted to the FAA.                                                                                                                                                                                                                                                                                                                                           |                                |                     | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 15. <b>Environmental Requirements</b> have been met.                                                                                                                                                                                                                                                                                                                                                         |                                | 01/27/22            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| AWOS Projects (TABLE 5-33)                                                                                                                                                                                                                                                                                                                                                                                   |                                |                     | Yes                                 | No                                  | N/A                                 |
| 16. FAA has determined that the AWOS has been successfully commissioned.                                                                                                                                                                                                                                                                                                                                     |                                |                     | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 17. Sponsor has provided the ADO with all commissioning documentation.                                                                                                                                                                                                                                                                                                                                       |                                |                     | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 18. The sponsor has provided the ADO with a copy of the Weather Message Switching Center reporting contract with the third-party interface provider if the sponsor has a connection to the Weather Message Switching Center Replacement (WMSCR). (Note that the AWOS-A, A/V, I and II are not eligible for reporting.)                                                                                       |                                |                     | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Audit                                                                                                                                                                                                                                                                                                                                                                                                        |                                |                     | Yes                                 | No                                  | N/A                                 |
| 19. Audit required per the Single Audit Act of 1984 and 2 CFR 200 ( <i>Expended \$750,000 or more on all Federal funding sources, not just grants from the FAA</i> ) and uploaded to <a href="https://harvester.census.gov/facweb/">https://harvester.census.gov/facweb/</a> . If no audit is required, identify the date the last audit was performed and by whom.                                          |                                |                     | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| <b>Date:</b>                                                                                                                                                                                                                                                                                                                                                                                                 | <b>TBD, estimate June 2022</b> | <b>By:</b>          | <b>Schoenfish &amp; Co. Inc.</b>    |                                     |                                     |
| <b>If any of the above were checked "No", please explain.</b>                                                                                                                                                                                                                                                                                                                                                |                                |                     |                                     |                                     |                                     |
| <p>Item 6: No grant amendment required for project.</p> <p>Items 8 &amp; 9: SDDOT to prepare final SF-271 and SF-425.</p> <p>Item 19: City of Madison estimates that the 2021 audit will start in June 2022, by Schoenfish &amp; Co. Inc. Due to the city's audit start date and length of time that audit will take to complete, City of Madison is asking to not include audit cost for this closeout.</p> |                                |                     |                                     |                                     |                                     |

## G. CONCLUSION

A final cost review of the subject has been completed. The final costs were determined as follows:

| Item                                                                                              |                                                                                        |                 |
|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|-----------------|
| Original Grant Amount:                                                                            |                                                                                        | \$ 1,121,000.00 |
| Total Allowable Costs:                                                                            |                                                                                        | \$ 1,091,841.13 |
| Maximum Federal Share of Allowable Costs:                                                         |                                                                                        | \$ 1,091,841.13 |
| Total Grant Increase (+)                                                                          | Amendment Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | \$ 0.00         |
| Final Payment Information                                                                         |                                                                                        |                 |
| Payments to Date at Closeout: (Per Delphi)                                                        |                                                                                        | \$ 958,791.42   |
| Has Final Payment Been Drawn? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Date or Amount Due                                                                     | \$ 133,049.71   |
| Rounded Final Payment                                                                             |                                                                                        | \$ 133,049      |

The Sponsor hereby certifies the information in this Project Closeout Report is true and accurate.

\_\_\_\_\_  
(Sponsor)

\_\_\_\_\_  
(Date)

Project closeout has been reviewed, and costs are verified and determined reasonable.

\_\_\_\_\_  
(FAA Program Manager)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(FAA ADO Manager or Assistant Manager)

\_\_\_\_\_  
(Date)

**RESOLUTION NO. 2022-04**

**A RESOLUTION TO AMEND ESTABLISHED EMPLOYEE COMPENSATION FOR 2022**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MADISON, SOUTH DAKOTA:

That Section C of Resolution 2021-29 adopted on November 22, 2021 is amended as follows:

Dated this \_\_\_\_\_ day of January, 2022.

CITY OF MADISON

/s/Marshall Dennert  
Mayor

ATTEST: /s/Sonya Wilt  
Finance Officer

## SECTION C

### GRADE ASSIGNMENT FOR FULL-TIME NON-EXEMPT POSITIONS

|                                                    |                     |
|----------------------------------------------------|---------------------|
| <b><u>Finance</u></b>                              | <b><u>Grade</u></b> |
| Finance Assistant                                  | 12                  |
| Utility Clerk                                      | 12                  |
| <b><u>Human Resources</u></b>                      | <b><u>Grade</u></b> |
| Human Resources Specialist                         | 15                  |
| <b><u>Engineer &amp; Community Development</u></b> | <b><u>Grade</u></b> |
| Building Official/Code Enforcement Officer         | 19                  |
| Engineering Technician                             | 16                  |
| Administrative Assistant II                        | 13                  |
| <b><u>Police</u></b>                               | <b><u>Grade</u></b> |
| Police Sergeant - Patrol                           | 19                  |
| Police Sergeant - CID                              | 19                  |
| Senior Police Officer                              | 17                  |
| Police Officer                                     | 16                  |
| Administrative Assistant                           | 12                  |
| <b><u>Library</u></b>                              | <b><u>Grade</u></b> |
| Systems Librarian                                  | 13                  |
| Children's Librarian                               | 13                  |
| Library Assistant II                               | 10                  |
| Library Assistant I                                | 9                   |
| <b><u>Community Center</u></b>                     | <b><u>Grade</u></b> |
| Youth Coordinator                                  | 10                  |
| Aquatics Coordinator                               | 9                   |

### BENEFITS FOR SECTION C

- 1) Compensation time.
- 2) Vacation – 80 hours per year through 5<sup>th</sup> year; 6-13 years - 120 hours per year; 14-25 years - 160 hours per year; 25+ years - 200 hours per year.
- 3) Sick – 104 hours per year. 25% payable upon resignation or retirement if hired before January 1, 2005. If hired after January 1, 2005, 25% payable upon resignation or retirement up to a total of 480 hours.
- 1) Holidays – 2021 Christmas Eve (4 hours), 2021 Christmas Day, New Year's Day, Martin Luther King Day, President's Day, Good Friday, Memorial Day, Juneteenth Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day. Holidays hours based on shift scheduled.
- 4) Retirement – 8% for Police Sergeants and Officers. 6% all others.
- 5) Health Insurance – single \$582.34 per month; employee + one \$1,014.06 per month; employee + children \$1,146.22 per month; family \$1,191.86 per month (city benefit towards premium).
- 6) Dental Insurance – single \$36.70 per month; employee + one \$68.02 per month; employee + children \$68.31 per month; family \$88.94 per month (city benefit towards premium).
- 7) Retired Health/Dental Insurance – able to retain group health and dental coverage by paying 100% of each monthly premium if eligible for SDRS benefits and has 15 years of full-time cumulative service. Coverage may continue until retiree reaches the age of 65 or otherwise qualifies for the Medicare program.
- 8) Life Insurance – \$30,000 term policy.
- 9) Flexible Benefits Plan – healthcare and dependent care options.
- 10) Wellness – \$10.00 bi-weekly if employee is member of Community Center or local fitness center. Community Center employees receive single Community Center membership.
- 11) Severance – 40 hours per each 5 years of service to begin after 5 years of service.
- 12) Boot Allowance – \$150.00 annually with PR#1 to safety sensitive, Engineer and Police.
- 13) Shift Differential – Weekday Night and Weekend Night 5pm – 7 am \$2.00 (Police Dept Only)
- 14) Shift Differential – Weekend Day 7am – 5pm \$1.50 (Police Dept Only)

# SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between **CITY OF MADISON** (Owner) and **BANNER ASSOCIATES, INC.** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **MADISON PARK CREEK WALLS – SITE 2** (Project). Engineer's services under this Agreement (Services) are generally identified as **FINAL DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES**.

Owner and Engineer further agree as follows:

## 1.01 Services of Engineer

- A. Engineer shall provide or furnish the Services set forth in this Agreement, included in **Appendix 1**, and any Additional Services authorized by Owner and consented to by Engineer.

## 2.01 Owner's Responsibilities

- A. Owner shall provide Engineer with existing Project-related information and data in Owner's possession and needed by Engineer for performance of Engineer's Services. Owner will advise the Engineer of Project-related information and data known to Owner but not in Owner's possession. Engineer may use and rely upon Owner-furnished information and data in performing its Services, subject to any express limitations applicable to the furnished items.
  - 1. Following Engineer's assessment of initially-available Project information and data, and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information and data as Additional Services.
- B. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance. Owner shall give prompt notice to Engineer whenever Owner observes or otherwise becomes aware of (1) any relevant, material defect or nonconformance in Engineer's Services, or (2) any development that affects the scope or time of performance of Engineer's Services.

## 3.01 Schedule for Rendering Services

- A. Engineer shall complete its Services within the following specific time period: **Identified in Appendix 1**. If no specific time period is indicated, Engineer shall complete its Services within a reasonable period of time.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

#### 4.01 Invoices and Payments

- A. Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.
- B. Payment: As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in this Paragraph 4.01, Invoices and Payments. If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.
- C. Failure to Pay: If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; (2) in addition Engineer may, after giving 7 days' written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges, and in such case Owner waives any and all claims against Engineer for any such suspension; and (3) if any payment due Engineer remains unpaid after 90 days, Engineer may terminate the Agreement for cause pursuant to Paragraph 5.01.A.2.
- D. Reimbursable Expenses: Engineer is entitled to reimbursement of expenses only if so indicated in Paragraph 4.01.E or 4.01.F. If so entitled, and unless expressly specified otherwise, the amounts payable to Engineer for reimbursement of expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external expenses allocable to the Project, including Engineer's subcontractor and subconsultant charges, with the external expenses multiplied by a factor of **1**.
- E. Basis of Payment
  - 1. Hourly Rates. Owner shall pay Engineer for Services as follows:
    - a. An amount equal to the cumulative hours charged to the Project by Engineer's employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services.
    - b. Engineer's Standard Hourly Rates are attached as **Appendix 2**.
    - c. The total compensation for Services and reimbursement of expenses is estimated to be as defined in **Appendix 1**.
- F. Additional Services: For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services. Engineer's standard hourly rates are attached as **Appendix 2**.

#### 5.01 Termination

- A. Termination for Cause

1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
    - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 5.01.A.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. In addition to its termination rights in Paragraph 5.01.A.1, Engineer may terminate this Agreement for cause upon 7 days' written notice (a) if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional, (b) if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, (c) if payment due Engineer remains unpaid for 90 days, as set forth in Paragraph 4.01.C, or (d) as the result of the presence at the Site of undisclosed Constituents of Concern as set forth in Paragraph 6.01.I.
  3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.
- B. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.
- C. Payments Upon Termination: In the event of any termination under Paragraph 5.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement, and to reimbursement of expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of all deliverable documents, whether completed or under preparation, subject to the provisions of Paragraph 6.01.F, at Owner's sole risk.
1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the deliverable documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
  2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's subcontractors or subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Paragraph 4.01.F.

## 6.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions of probable construction cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents, other than those made by Engineer.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Engineer grants to Owner a limited license to use the deliverable documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the deliverable documents, and subject to the following limitations:
  - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
  - 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific

purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and subconsultants;

3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
  4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer agree to transmit, and accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
  - H. Waiver of Damages; Limitation of Liability: To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.
  - I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
  - J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute will be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
  - K. This Agreement is to be governed by the laws of the state in which the Project is located.
  - L. Engineer's Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

## 7.01 Definitions

- A. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, subcontractors, and subconsultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. Constituent of Concern—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), lead based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to laws and regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

## 8.01 Successors, Assigns, and Beneficiaries

- A. Successors and Assigns
  - 1. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 8.01.A.2 the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
  - 2. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- B. Beneficiaries: Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

## 9.01 Total Agreement

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and 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.

Attachments:

Appendix 1, Scope of Services

Appendix 2, Engineer's Standard Hourly Rates

This Agreement's Effective Date is:

Owner:

City of Madison

(name of organization)

By:

(authorized individual's signature)

Date:

(date signed)

Name: Marshall Dennert

(typed or printed)

Title: Mayor

(typed or printed)

Address for giving notices:

116 W Center St

Madison, South Dakota 57042

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

Engineer:

Banner Associates, Inc.

(name of organization)

By:

(authorized individual's signature)

Date:

1/26/2022

(date signed)

Name: Pat J. Carey

(typed or printed)

Title: Sr. Vice President

(typed or printed)

Address for giving notices:

409 22<sup>nd</sup> Avenue South

Brookings, South Dakota 57006

Designated Representative:

Name: Weston Blasius

(typed or printed)

Title: Project Manager

(typed or printed)

Address:

2307 West 57<sup>th</sup> Street, Suite 102

Sioux Falls, South Dakota 57108

Phone: 1-885-323-6342

Email: westonb@bannerassociates.com

# **APPENDIX 1**

Date: January 26, 2022

## **Engineering Scope of Services to Complete Final Design and Construction Services for Madison Park Creek Walls Site 2, 4<sup>th</sup> Street Bridge and 5<sup>th</sup> Street Bridge Improvements:**

The following items will be included in the scope of work to complete final design of the proposed improvements:

### **Final Design:**

#### **Park Creek Walls Site 2 Improvements – Exhibit A**

- Design Coordination Meetings with Banner design team and City of Madison (4 meetings – project review meeting, 60% design, 90% design and Final Design)
- Assist on coordination through City of Madison with FEMA and SHPO
- Prepare Construction Plans to generally include:
  - Title Sheet and Overview of Project
  - General Construction Notes
  - Typical Sections
  - Removal Plan
  - Erosion Control Plan and Storm Water Pollution Prevention Plan
  - Sequence of Operations/Traffic Control Plan
  - Creek Bank Grading Plan
  - Structural Plan for Wall Improvements
  - Architectural Plan for Wall Restoration
  - Construction Details
  - Cross Sections
- Prepare project manual consisting of EJCDC construction documents along with technical specifications
- Send 60% plans to utility companies for coordination
- Prepare updated construction costs estimate at 90% design
- Prepare a 404 permit application that incorporates the final design for the project
- Assist in project bidding by performing the following:
  - Prepare Advertisement
  - Prepare Addenda if Necessary
  - Answer Bidder Questions
  - Attend Bid Opening and Evaluate Bids Received

#### **4<sup>th</sup> Street Bridge Improvements -**

- Design Coordination Meeting with Banner design team and City of Madison (2 meetings – project review meeting and 90% design)
- Assist on coordination through City of Madison with FEMA and SHPO

- Prepare Construction Plans to generally include:
  - Title Sheet and Overview of Project
  - General Construction Notes
  - Typical Sections
  - Improvements Plan
- Include Project in Site 2 project manual consisting of EJCDC construction documents along with technical specifications
- Send 60% plans to utility companies for coordination
- Prepare updated construction costs estimate at 90% design

#### **5<sup>th</sup> Street Bridge Improvements -**

- Design Coordination Meeting with Banner design team and City of Madison (2 meetings – project review meeting and 90% design)
- Assist on coordination through City of Madison with FEMA and SHPO
- Prepare Construction Plans to generally include:
  - Title Sheet and Overview of Project
  - General Construction Notes
  - Typical Sections
  - Improvements Plan
- Include Project in Site 2 project manual consisting of EJCDC construction documents along with technical specifications
- Send 60% plans to utility companies for coordination
- Prepare updated construction costs estimate at 90% design

The following items will be included in the scope of work to perform construction services for the proposed improvements:

#### **Construction Services:**

#### **Park Creek Walls Site 2 Improvements –**

- Provide Construction Staking
- Construction Administration including:
  - Prepare construction contracts between Owner and Contractor
  - Organize and administer pre-construction meeting
  - Coordinate on project requests or changes including: RFI's, RFP's, CO's
  - Coordinate with a resident project representative
  - Coordinate with General Contractor
  - Review shop drawings
  - Review and approve Contractor Applications for Payment
  - Perform a Substantial Completion walk-through with Owner and prepare a punch list
  - Complete a final walk-through
  - Prepare Construction Plans of Record

- Resident Project Engineering including:
  - Complete daily field reports for significant activities performed during construction
  - Coordinate testing
  - Regular correspondence with the Owner and Contractor
  - Observation of work completed to verify general conformance with the construction plans and specifications (This effort is estimated to take 12 weeks of on site observation at 40 hrs per week and 6 weeks of part time observation)

#### Submittals and Timelines:

**Final Design** services include providing design plan and specification submittal at approximately 90% completion to Owner, FEMA and SHPO for review. Final plans and specifications for bid will be submitted following receipt of comments and revision of construction documents.

1. Banner proposes to complete Final Construction Plans and Specifications for bid in 180 days after authorization to proceed;
2. This portion of the contract shall be considered complete when bids are opened for the project.

**Construction Services** will commence once the project has been bid and shall be considered complete when the project closeout documents have been submitted. It is anticipated that construction will take place between August 2022 – December 2022.

#### Exclusions:

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

- Geotechnical Investigation;
- Hazardous Materials;
- Locating borrow or disposal sites
- Wetland delineation
- Materials Testing
- Site Electrical, Gas and Telecommunication Utilities
- Engineering Services during construction on 4<sup>th</sup> Street and 5<sup>th</sup> Street bridge repairs

#### Client Obligations:

- Perform Coordination with FEMA, SHPO and other state or federal funding agencies
- Owner supplied data or documents
- Obtain easements for designed improvements and construction
- Right of entry

Engineering Services Compensation:

We understand that the scope of construction work for these projects that was reviewed and concurred by FEMA was estimated to be approximately \$2,328,000.00.

We are proposing to complete the above-described Engineering Services on an hourly rate with an aggregate (not to exceed) limit as outlined below:

|                                                     |                                      |
|-----------------------------------------------------|--------------------------------------|
| Final Design Park Creek Walls Site 2:               | \$102,700.00                         |
| Final Design 4 <sup>th</sup> Street Bridge Repairs: | \$1,700.00                           |
| Final Design 5 <sup>th</sup> Street Bridge Repairs: | \$6,200.00                           |
| Construction Services Park Creek Walls Site 2:      | \$133,100.00                         |
| Total Aggregate Contract =                          | \$243,700.00 including reimbursables |

These costs do not include fees required by outside agencies regarding permit application fees or review fees. Any work that falls outside this scope will be billed separately based on our hourly rates in accordance with the attached fee schedule.

## APPENDIX 2



Banner Associates, Inc.  
409 22nd Avenue South  
Brookings, SD 57006  
Tel 605.692.6342  
Toll Free 855.323.6342  
[www.bannerassociates.com](http://www.bannerassociates.com)

### SCHEDULE OF LABOR RATES AND EXPENSES

January 2021

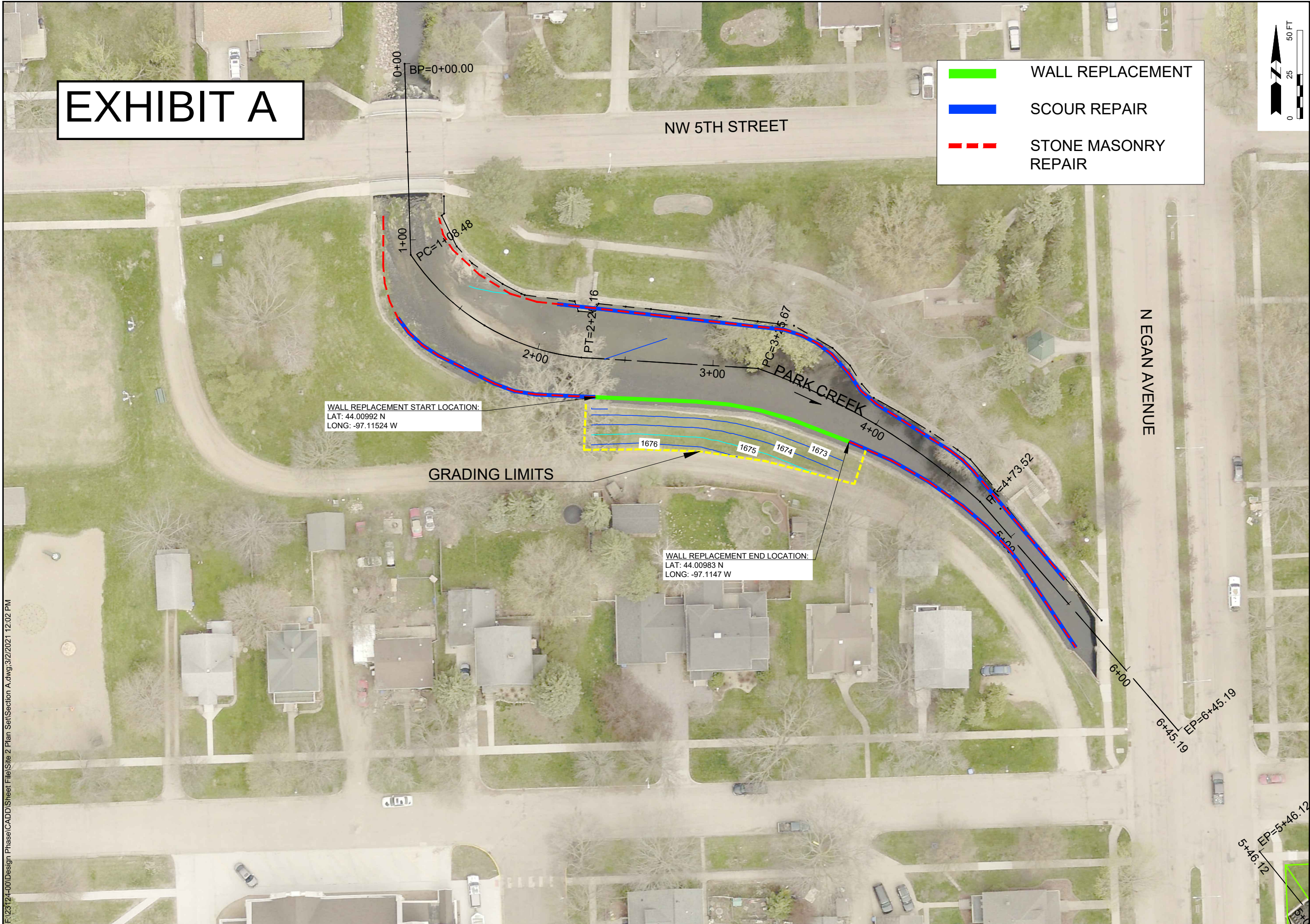
|                              |                           |
|------------------------------|---------------------------|
| Administrative .....         | \$55.00 to \$145.00/Hour  |
| Surveying/Geomatics .....    | \$65.00 to \$140.00/Hour  |
| Engineering Technician.....  | \$65.00 to \$110.00/Hour  |
| Environmental Scientist..... | \$65.00 to \$135.00/Hour  |
| Engineering Intern.....      | \$85.00 to \$105.00/Hour  |
| Project Engineer .....       | \$105.00 to \$155.00/Hour |
| Project Manager .....        | \$120.00 to \$215.00/Hour |

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

|                                       |             |
|---------------------------------------|-------------|
| Mileage.....                          | \$0.55/Mile |
| Photocopy .....                       | 0.08/Copy   |
| Black & White 11x17 Laser Prints..... | 0.15/Sheet  |
4. All other direct project expenses at actual cost of materials.

Rates are subject to change annually.

# EXHIBIT A



F:\23124-00\Design Phase\CADD\Sheet File\Site 2 Plan Set\Section A.dwg;3/2/2021 12:02 PM

**BANNER**  
engineering a better community  
www.bannerassociates.com - Toll Free: 1.855.323.6342

PROJECT / SHEET TITLE:  
MADISON PARK CREEK WALL IMPROVEMENTS - SITE 2

OVERVIEW MAP

MADISON, SOUTH DAKOTA

DESCRIPTION

| REV. | DATE | DESCRIPTION |
|------|------|-------------|
|      |      |             |
|      |      |             |
|      |      |             |

FOR REVIEW ONLY  
NOT FOR CONSTRUCTION

JOB No.: 23124-00  
DATE: NOVEMBER 2020  
DESIGNED BY:  
CHECKED BY:  
DRAWN BY:

0 12" 1"  
SCALE REDUCTION BAR

SHEET No.:  
A2