

DGR ENGINEERING
Agreement for Professional Services

THIS AGREEMENT is entered into on the ____ day of _____, 20__24__, by and between City of Custer, hereinafter referred to as “Client” and **DeWild Grant Reckert and Associates Company, d/b/a DGR Engineering**, hereinafter referred to as “Consultant”.

WHEREAS, Client requires professional services for **Burnham Avenue Extension** and,

WHEREAS, Consultant is willing to provide such services upon the terms and conditions hereinafter set forth,

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree to the following general terms and conditions:

1. BASIC AGREEMENT:

- 1.1. SCOPE OF WORK:** The Scope of Work for this Project shall be documented in a manner consistent with the format of Exhibit A to this Agreement and shall be considered an integral part of this Agreement.
- 1.2. GENERAL:** This Agreement sets forth the general terms and conditions which will apply to all services rendered. Consultant shall provide or cause to be provided the services set forth in this Agreement and any subsequent amendments; and Client shall pay Consultant for such services as set forth in Paragraph 3.3.
- 1.3. TERM:** This Agreement shall be effective on the date shown above, until terminated as provided in paragraph 4.2 below.

2. CONSULTANT’S RESPONSIBILITIES:

- 2.1. SERVICES PROVIDED:** Exhibit A will describe services to be performed and deliverables, if any, to be provided. Consultant shall not be obligated to perform any services unless and until Client and Consultant agree as to the scope of Consultant's services, time for performance, Consultant's compensation, and Client’s responsibilities. All services shall be subject to the terms and conditions of this Agreement.
- 2.2. STANDARD OF CARE:** The standard of care for all professional engineering and related services performed or furnished by Consultant 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. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant’s services.
- 2.3. INDEPENDENT CONTRACTOR:** All labor, material and equipment necessary to complete the Services shall be provided by Consultant as an independent contractor. Consultant shall be solely responsible for the means and methods used to complete its Services. Consultant is not an employee of or in a joint venture with Client.

2.4. TIMELINESS OF PERFORMANCE: The Consultant will perform its Services with reasonable diligence and expediency consistent with sound professional practices.

3. CLIENT'S RESPONSIBILITY:

3.1. DUTY TO PROVIDE INFORMATION: Client agrees to provide Consultant with any and all documents, including but not limited to, structural documents, geotechnical reports and other technical information regarding the location where Services are to be performed (the "Site"), if any, which are available to Client and which relate to the Services. Client shall be responsible for, and Consultant may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, documents and other information furnished by Client to Consultant under the Agreement. Consultant may use such requirements, reports, data, documents and information in performing or furnishing Services under the Agreement. Client shall make decisions and carry out its other responsibilities in a timely manner under the Agreement so as not to delay Consultant's Services.

3.2. PERMITS AND LICENSES: Client agrees to timely obtain and provide all licenses, permits, registrations, certificates and government or agency approvals that may be required to commence and/or complete Client's Project.

3.3. PAYMENT AND TERMS: Consultant shall prepare invoices in accordance with its standard invoicing practices and Exhibit A. Consultant shall submit its invoices to Client on a monthly basis. Invoices are due and payable within 30 days of receipt. If Client fails to make any payment due Consultant for services and expenses within 30 days after receipt of Consultant's invoice, then Client will be considered in breach of the payment terms of this Agreement, and the compounded amount due Consultant 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.

If Client disputes an invoice, Client may withhold until resolution of the disputed portion only that portion so disputed, and must pay the undisputed portion.

Whenever Consultant is entitled to compensation for the charges of Sub-consultants used by the Consultant as part of the services provided to the Client, those charges shall be billed to the Client at the amount billed to the Consultant by the Sub-consultant times a factor of 1.1.

Client shall pay all governmental taxes and fees applicable to Consultant's services, which, unless specifically listed in the Fee Arrangement section of Exhibit A, will be in addition to the compensation to which Consultant is entitled under this Agreement. If after the Effective Date of this Agreement any governmental entity takes a legislative action that imposes sales or use taxes, fees, or charges on Consultant's services or compensation different than as described by Exhibit A, then the Consultant may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Client shall reimburse Consultant for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Consultant is entitled under the terms of this Agreement.

4. GENERAL CONSIDERATIONS:

4.1. OWNERSHIP OF DOCUMENTS: All data, reports, drawings, specifications, record drawings, work-product, and other deliverables (whether in printed or electronic format) provided by or furnished by Consultant pursuant to the Agreement (the “Documents”) are instruments of service in respect to this Project, and Consultant shall retain an ownership and property interest therein (including the right of reuse at the discretion of Consultant) whether or not the Project is completed. Notwithstanding the foregoing, upon completion of the project or termination of the services and payment of all monies due the Consultant, Consultant hereby grants to Client a royalty-free, non-exclusive unlimited license to utilize Consultant’s Documents provided to Client as part of the Services to the extent necessary for the construction, operation, maintenance or repair of the Project or any unit or component thereof. Client may also make and retain copies of Documents for information and reference in connection with use on the Project by Client and others. Such Documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by Consultant, as appropriate for the specific purpose intended, will be at Client’s sole risk and without liability or legal exposure to Consultant, its officers, directors, employees, agents, or Consultants. Client shall indemnify and hold harmless Consultant, its officers, directors, partners, employees, agents, and its Consultants from all claims, damages, losses, and expenses, including attorneys’ fees, arising out of or resulting there from.

4.2. SUSPENSION AND TERMINATION: If the client is in breach of the payment terms or otherwise is in material breach of this Agreement, the Consultant may suspend performance of services upon seven (7) days’ notice to the Client. The Consultant shall have no liability to the Client, and the Client agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the Client. Upon receipt of payment in full of all outstanding sums due from the Client, or curing of such other breach which caused the Consultant to suspend services, the Consultant shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

Either party may terminate this Agreement by giving the other party a written seven (7) days’ notice of its intent to terminate. Client shall pay for all services rendered and all reimbursable costs incurred by Consultant up to the date of termination. Payment to Consultant shall be made within 30 days of the date of termination.

4.3. INSURANCE: Consultant will purchase and maintain such insurance as is reasonable and necessary for the Services being performed. The insurance required by this section shall include the coverage and be written for not less than the limits of liability and coverage as hereinafter provided, or as required by law, whichever is greater.

Workers Compensation:	Statutory Limits in state where Project is located
Commercial General Liability:	\$1,000,000 each occurrence \$2,000,000 general aggregate
Professional Liability:	\$2,000,000 per claim \$2,000,000 general aggregate

Umbrella Liability: \$5,000,000 each occurrence
 \$5,000,000 general aggregate

Client shall be included as additional insured as respects Consultant's General Liability policy. Upon Client's request, Consultant shall deliver to Client certificates of insurance evidencing the coverage set forth above.

- 4.4. OPINIONS OF COST:** Consultant's opinions of probable Construction Cost are to be made on the basis of Consultant's experience and qualifications and represent Consultant's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because Consultant 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, Consultant cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Consultant. If Client requires greater assurance as to probable Construction Cost, Client must employ an independent cost estimator.
- 4.5. STATUS DURING CONSTRUCTION:** If Construction Observation is included in the scope of services, the Consultant shall visit the Project site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and the Consultant, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow the Consultant, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Construction Contract Documents.

Based on this general observation, the Consultant shall keep the Client informed about the progress of the Work and shall endeavor to inform the Client of observed deficiencies in the Work. If the Client desires more extensive project observation or full-time project representation, the Client shall request that such services be provided by the Consultant as Additional Services.

The Consultant shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Construction Contract Documents.

The Consultant shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Consultant does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Construction Contract Documents or any applicable laws, codes, rules or regulations.

5. MISCELLANEOUS PROVISIONS:

- 5.1. MUTUAL WAIVERS:** To the fullest extent permitted by law, Client and Consultant (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, 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 the Project, and (2) agree that Consultant's total liability to Client and to all construction contractors and subcontractors on construction related to any services provided, due to Consultant's negligent acts, errors, or omissions, shall be limited to \$250,000.
- 5.2. CODE COMPLIANCE:** The Consultant shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations in effect as of the date of this Agreement issued by Client to Consultant. Design changes made necessary by newly enacted laws, codes and regulations after the Agreement date shall entitle the Consultant to a reasonable adjustment in the schedule and additional compensation based upon Consultant's Standard Fee Schedule in effect when the work is completed. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over a Project under this Agreement, the Consultant shall notify the Client of the nature and impact of such conflict. The Client agrees to cooperate and work with the Consultant in an effort to resolve this conflict.
- 5.3. DISPUTE RESOLUTION:** The Parties agree to submit all disputes between them to formal non-binding mediation prior to exercising their rights under the Agreement or under law.
- 5.4. SEVERABILITY:** Any term or provision of this Agreement found to be invalid or unenforceable under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.
- 5.5. ASSIGNMENT:** Neither Client nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, monies that are due or may become due) under the Agreement without the written consent of the other, 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 the Agreement.
- 5.6. GOVERNING LAW and JURISDICTION:** Client and Consultant agree that the Contract Documents and any legal actions concerning their validity, interpretation and performance shall be governed by the laws of the State in which the project is located.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Professional Services as of the date first above written.

City of Deadwood
(Client)

By: _____

Title: Mayor
(Authorized signature and Title)

Date: _____

Address: 102 Sherman St.

City: Deadwood, SD 57732

Phone: 605-578-3082

DeWild Grant Reckert and Associates Company
d/b/a DGR Engineering
(Consultant)

By:  _____

Title: Vice President
(Authorized signature and Title)

Date: 6/19/2024

Address: 1313 E. Saint Patrick St.

City: Rapid City, SD 57701

Phone: 605-591-6270

EXHIBIT A

Scope of Work

DGR Engineering (Consultant) agrees to provide to: City of Deadwood (Client) the professional services described below for the Project identified below.

PROJECT NAME: Burnham Avenue Extension

PROJECT DESCRIPTION: Roadway and utility extension from Summit @ Deadwood Stage Run Subdivision to existing Burnham Avenue

DGR CONTACT PERSON: Dana Foreman, PE

CLIENT CONTACT PERSON: Kevin Kuchenbecker – City Historic Preservation Officer

PROJECT UNDERSTANDING:

The City is planning to extend Burnham Avenue northwest approximately 2,500 LF from Dakota St. The project will consist of paved urban roadway with curb, gutter and sidewalk on one side. Utilities will consist of sanitary sewer main and water main, water system pressure reducing valve within a prefabricated building.

SCOPE OF WORK:

Preliminary Phase

- Coordinate with AET, location of six (6) geotechnical investigation boring locations utilizing Google Earth .kmz file.
- Prepare Right of Way plat of proposed Burnham Avenue as required for the project.
- Set one set of Right of Way property pins.

Design Phase

- Attend project kick off meeting at City of Deadwood. Project Manager to attend in person.
- Provide roadway and utility layout with 2 revisions based on City comments.
- Provide plans, cover sheet, detail sheets, general notes, and legend.
- Provide 2,500 LF of urban road design according to AASHTO local road design manual. Provide plan and profile sheets.
- Provide 2,500 LF of water main plan and profile sheets with connection at Dakota St.
- Provide design of one water main pressure reducing valve and prefabricated building layout. Will obtain and coordinate prefabricated building layout, controls and specifications from Dakota Pump, Inc.
- Provide 2,500 LF of sanitary sewer main plan and profile with connection at Dakota St.
- Provide storm drainage analysis of 10 and 100-yr rainfall events for proposed roadway.
 - Perform roadway capacity analysis.
 - Perform street inlet sizing and location analysis.
 - Perform storm drain sizing analysis.
 - Provide drainage report documenting analysis and results.
- Provide storm sewer plan and profile sheets.
- Provide overall site grading plans with 1' proposed contours.
- Provide erosion control plan and notes.
- Provide permanent street signing plan sheets.

- Coordinate with private utility companies. Incorporate private utility company provided linework to project plans.
- Prepare technical specifications and bidding documents.
- Provide two (2) opinion of construction costs.
- Attend three (3) design meetings with City.
- Submittal of plans, specifications and opinion of construction costs at 60% and 100%.
- Submit final stamped plans to SDDANR for approval and address any comments.

Bidding

- Compile bidding documents and technical specifications.
- Coordinate bidding advertisement with City.
- Address contractor and supplier questions related to documents during bidding period. Issue addendum as needed.
- Review submitted bids, generate bid tabulation and issue recommendation.

Construction Administration

- Review material submittals and shop drawings.
- Participate in a pre-construction conference and generate meeting notes.
- Respond to Contractor Requests for Information (RFI's).
- Review Geotechnical material testing reports.
- Generate four (4) intermittent pay applications.
- Participate in six (6) construction progress meetings and generate meeting notes.
- Perform twenty (20) trips to the site to review and document Contractor's progress. Trips to be performed by construction engineering technician.
- Assist in communicating with Owner the project concerns, site conditions, Contractor concerns, and related issues.
- Perform one (1) Substantial completion site walk through and prepare punch list of contract work remaining to be completed to achieve final completion.
- Prepare project close-out documenting completion of project punch list.
- Prepare final pay application.
- Prepare as-built drawings based on information provided by the Contractor.

FEE ARRANGEMENT:

DGR proposes to perform the services outlined above as follows:

Project Phase	Fee Type	Fee Amount
Preliminary & Final Design	Lump Sum	\$75,978.00
Bidding	Lump Sum	\$4,500.00
Construction Administration	Lump Sum	\$36,499.61
Total Lump Sum Fee		\$116,977.61

The Engineer's compensation is conditioned on the time to complete construction not exceeding **3 months**. Should the time to complete construction be extended beyond this period, the total compensation to Engineer shall be appropriately adjusted.

Note: Additional services outside the tasks defined in the Scope of Work can be provided at the Client's request and will be performed at the hourly rates in effect for the respective employees at the time the services are performed.

SCHEDULE:

- 60% Design Plans, Specifications and Opinion of Construction Costs - April 15, 2024
- 100% Design Plans, Specifications and Opinion of Construction Costs - May, 2024
- Stamped Plans and Specifications to SDDANR for Approval June, 2024
- Bidding Summer 2024
- Construction 2024-2025

SPECIAL TERMS AND CONDITIONS:

- Topographic survey to be provided by Others.
- Geotechnical investigation not included.
- Rebidding services not included.
- Material testing and construction staking not included.
- Retaining wall or structural design not included.
- Storm water pollution prevention permit Notice of Intent (NOI) not included.
- Potable water booster station not included.
- Site power and roadway lighting design not included.