

**Agreement Between City of Rapid City and Burns & McDonnell Engineering
Company, Inc., for Professional Services for Alternate Fuel Landfill Diversion
Program Evaluation,
Project No. 2803 / CIP No. 51424**

AGREEMENT made February 5, 2024, between the City of Rapid City, SD (City) and Burns & McDonnell Engineering Company, Inc., (Engineer), located at 6909 South Lyncrest Place, Suite 120, Sioux Falls, SD 57108. City intends to obtain services for Alternate Fuel Landfill Diversion Program Evaluation, Project No. 2803 / CIP No. 51424. The scope of services is as described within this document and as further described in Exhibits A, B and C (attached).

The City and the Engineer agree as follows:

The Engineer shall provide professional engineering services for the City in all phases of the Project and as further defined in Exhibits A, B and C (attached), serve as the City's professional engineering representative for the Project, and give professional engineering consultation and advice to the City while performing its services. Once executed, the effective date of this agreement shall be considered to be January 15, 2024.

Section 1—Basic Services of Engineer

1.1 General

- 1.1.1 The Engineer shall perform professional services described in this agreement, which include customary engineering services. Engineer intends to serve as the City's professional representative for those services as defined in this agreement and to provide advice and consultation to the City as a professional. Any opinions of probable project cost, approvals, and other decisions provided by Engineer for the City are rendered on the basis of experience and qualifications and represent Engineer's professional judgment.
- 1.1.2 All work shall be performed by or under the direct supervision of a professional Engineer licensed to practice in South Dakota.
- 1.1.3 All documents including Drawings and Specifications provided or furnished by Engineer pursuant to this Agreement are instruments of service in respect of the Project and Engineer shall retain an ownership therein. Reuse of any documents pertaining to this project by the City on extensions of this project or on any other project shall be at the City's risk. The City agrees to defend, indemnify, and hold harmless Engineer from all claims, damages, and expenses including attorney's fees



arising out of such reuse of the documents by the City or by others acting through the City.

- 1.1.4 The contract will be based on an hourly rate and reimbursable fee schedule with a maximum not-to-exceed amount.

1.2 **Scope of Work**

The Engineer shall:

- 1.2.1 Consult with the City, other agencies, groups, consultants, and/or individuals to clarify and define requirements for the Project and review available data.
- 1.2.2 Perform the tasks described in the Scope of Services. (See Exhibit A.)
- 1.2.3 Conduct a location survey of the Project to the extent deemed necessary to provide adequate site information.
- 1.2.4 Prepare a report presenting the results of the study as outlined in the scope of services.

Section 2—Information Provided by City

The City will provide any information in its possession for the project at no cost to the Engineer.

Section 3—Notice to Proceed

The City will issue a written notification to the Engineer to proceed with the work. The Engineer shall not start work prior to receipt of the written notice. The Engineer shall not be paid for any work performed prior to receiving the Notice to Proceed.

Section 4—Mutual Covenants

4.1 **General**

- 4.1.1 The Engineer shall not sublet or assign any part of the work under this Agreement without written authority from the City.
- 4.1.2 The City and the Engineer each binds itself and partners, successors, executors, administrators, assigns, and legal representatives to the other party to this agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, regarding all covenants, agreements, and obligations of this agreement.



- 4.1.3 Nothing in this agreement shall give any rights or benefits to anyone other than the City and the Engineer.
- 4.1.4 This agreement constitutes the entire agreement between the City and the Engineer and supersedes all prior written or oral understandings. This agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.
- 4.1.5 The Engineer shall make such revisions in plans which may already have been completed, approved, and accepted by the City, as are necessary to correct Engineer's errors or omissions in the plans, when requested to do so by the City, without extra compensation therefore.
- 4.1.6 If the City requests that previously satisfactorily completed and accepted plans or parts thereof be revised, the Engineer shall make the revisions requested by the City. This work shall be paid for as extra work.
- 4.1.7 If the City changes the location from the one furnished to the Engineer, or changes the basic design requiring a new survey for the portions so changed, the redesign will be paid for as extra work.
- 4.1.8 The City may at any time by written order make changes within the general scope of this Agreement in the work and services to be performed by the Engineer. Any changes which materially increase or reduce the cost of or the time required for the performance of the Agreement shall be deemed a change in the scope of work for which an adjustment shall be made in the Agreement price or of the time for performance, or both, and the Agreement shall be modified in writing accordingly. Additional work necessary due to the extension of project limits shall be paid for as extra work.
- 4.1.9 Extra work, as authorized by the City, will be paid for separately and be in addition to the consideration of this Section.
- 4.1.10 For those projects involving conceptual or process development services, activities often cannot be fully defined during the initial planning. As the project does progress, facts and conditions uncovered may reveal a change in direction that may alter the scope of services. Engineer will promptly inform the City in writing of such situations so that changes in this agreement can be renegotiated.
- 4.1.11 This Agreement may be terminated (a) by the City with or without cause upon seven days' written notice to the Engineer and (b) by the Engineer for cause upon seven days' written notice to the City. If the City terminates the agreement without cause, the Engineer will be paid for



all services rendered and all reimbursable expenses incurred prior to the date of termination.

If termination is due to the failure of the Engineer to fulfill its agreement obligations, the City may take over the work and complete it. In such case, the Engineer shall be liable to the City for any additional cost to the extent directly resulting from Engineer's action.

- 4.1.12 The City or its duly authorized representatives may examine any books, documents, papers, and records of the Engineer involving transactions related to this agreement for three years after final payment. All examinations will be performed at reasonable times, with proper notice. Engineer's documentation will be in a format consistent with general accounting procedures.
- 4.1.13 The City shall designate a representative authorized to act on the City's behalf with respect to the Project. The City or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Engineer in order to avoid unreasonable delay in the orderly and sequential progress of the Engineer's services.
- 4.1.14 Costs and schedule commitments shall be subject to renegotiation for delays caused by the City's failure to provide specified facilities or information or for delays caused by other parties, excluding sub-contractors and sub-consultants, unpredictable occurrences including without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdowns, acts of God, or the public enemy, or acts of regulations of any governmental agency or any other conditions or circumstances beyond the control of the City or Engineer. Temporary delays of services caused by any of the above which results in additional costs beyond those outlined may require renegotiation of this agreement.
- 4.1.15 The City will give prompt written notice to the Engineer if the City becomes aware of any fault or defect in the Project or nonconformance with the Project Documents.
- 4.1.16 Unless otherwise provided in this Agreement, the Engineer and the Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos products, polychlorinated biphenyl (PCB), or other toxic substances.



- 4.1.17 In the event asbestos or toxic materials are encountered at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of Engineer's services, Engineer may, at their option and without liability for consequential or any other damages, suspend performance of services on the project until the City retains appropriate specialist CONSULTANT(S) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials.
- 4.1.18 This agreement, unless explicitly indicated in writing, shall not be construed as giving Engineer the responsibility or authority to direct or supervise construction means, methods, techniques, sequences, or procedures of construction selected by any contractors or subcontractors or the safety precautions and programs incident to the work of any contractors or subcontractors.
- 4.1.19 Neither the City nor the Engineer, nor its Consultants, shall hold the other liable for any claim based upon, arising out of, or in any way involving the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants.
- 4.1.20 Neither the City nor the Engineer, nor its Consultants, shall hold the other liable for any claim based upon, arising out of, or any way involving the specification or recommendation of asbestos, in any form, or any claims based upon use of a product containing asbestos.
- 4.1.21 Engineer hereby represents and warrants that it does not fail or refuse to collect or remit South Dakota or City sales or use tax for transactions which are taxable under the laws of the State of South Dakota.

4.2 City of Rapid City NonDiscrimination Policy Statement

In compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination act of 1975, the Americans with Disabilities Act of 1990, and other nondiscrimination authorities it is the policy of the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701-5035, to provide benefits, services, and employment to all persons without regard to race, color, national origin, sex, disabilities/handicaps, age, or income status. No distinction is made among any persons in eligibility for the reception of benefits and services provided by or through the auspices of the City of Rapid City.

Engineer will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission, its agencies or representatives, to ascertain compliance with the above provisions.



This section shall be binding on all subcontractors or suppliers.

Section 5—Payments to the Engineer

5.1 Schedule of Pay Rates

The City will pay the Engineer for services rendered or authorized extra work according to the Engineer's hourly and reimbursable rate schedule described in Exhibit C.

5.2 Fee

The maximum amount of the fee for the services as detailed in Section 1.2 shall not exceed \$159,700.00 unless the scope of the project is changed as outlined in Section 4. If expenses exceed the maximum amount, the Engineer shall complete the design as agreed upon here without any additional compensation. Sub task dollar amounts may be reallocated to other tasks as long as the total fee is not exceeded. Prime consultant may not mark up sub-consultant or sub-contractor services.

5.3 Progress Payments

Monthly progress payments shall be processed by the City upon receipt of the claim as computed by the Engineer based on work completed during the month per the hourly rates and allowable reimbursable as established in Section 5.1 and approved by the City.

Net payment to the Engineer shall be due within forty-five (45) days of receipt by the City.

Section 6—Completion of Services

The Engineer shall complete services on or before December 6, 2024 based on a notice to proceed on or before February 23, 2024.

Section 7—Insurance Requirements

7.1 Insurance Required

The Engineer shall secure the insurance specified below. The insurance shall be issued by insurance company(s) acceptable to the City and may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance including any policy endorsements shall be provided to the City prior to or upon the execution of this Agreement.



7.2 Cancellation

The Engineer will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The Contractor agrees to hold the City harmless from any liability, including additional premium due because of the Contractor's failure to maintain the coverage limits required.

7.3 City Acceptance of Proof

The City's approval or acceptance of certificates of insurance does not constitute City assumption of responsibility for the validity of any insurance policies nor does the City represent that the coverages and limits described in this agreement are adequate to protect the Engineer, its consultants or subcontractors interests, and assumes no liability therefore. The Engineer will hold the City harmless from any liability, including additional premium due, because of the Engineer's failure to maintain the coverage limits required.

7.4 Specific Requirements

7.4.1 Workers' compensation insurance with statutory limits required by South Dakota law. Coverage B-Employer's Liability coverage of not less than \$500,000 each accident, \$500,000 disease-policy limit, and \$500,000 disease-each employee.

7.4.2 Commercial general liability insurance providing contractual, personal injury, bodily injury and property damage liability coverage with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. If the occurrence form is not available, claims-made coverage may be provided. Claims-made coverage shall continue through the term of this Agreement, and Engineer shall purchase at its sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) shall demonstrate through Certificates of Insurance that Engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items 1), 2), or 3) will continue for at least a period of three years after completion of the terms of this Agreement. The policy shall name the City and its representatives as an additional insured.

7.4.3 Automobile liability insurance covering all owned, nonowned, and hired automobiles, trucks, and trailers. The coverage shall be at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each



occurrence. The required limit may include excess liability (umbrella) coverage. The policy shall name the City and its representatives as an additional insured.

- 7.4.4 Professional liability insurance providing coverage for claims arising from the negligent acts, errors or omissions of the Engineer or its consultants, of not less than \$1,000,000 each occurrence and not less than \$1,000,000 annual aggregate. Coverage shall be maintained for at least three years after final completion of the services. If this policy provides for claims-made coverage, the claims-made coverage shall continue through the term of this Agreement, and Engineer shall purchase at its sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) shall demonstrate through Certificates of Insurance that Engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items 1), 2), or 3) will continue for at least a period of three years after completion of the terms of this Agreement.

Section 8—Hold Harmless

The Engineer hereby agrees to hold the City harmless from any and all claims or liability including attorneys' fees arising out of the professional services furnished under this Agreement, and for bodily injury or property damage arising out of services furnished under this Agreement, providing that such claims or liability are the result of a negligent act, error or omission of the Engineer and/or its employees/agents arising out of the professional services described in the Agreement.

Section 9—Independent Business

The parties agree that the Engineer operates an independent business and is contracting to do work according to his own methods, without being subject to the control of the City, except as to the product or the result of the work. The relationship between the City and the Engineer shall be that as between an independent contractor and the City and not as an employer-employee relationship. The payment to the Engineer is inclusive of any use, excise, income or any other tax arising out of this agreement.

Section 10-Indemnification

If this project involves construction and Engineer does not provide consulting services during construction including, but not limited to, onsite monitoring, site visits, site observation, shop drawing review and/or design clarifications, City agrees to indemnify and hold harmless Engineer from any liability arising from the construction activities undertaken for this project, except to the extent such liability is caused by Engineer's negligence.



Section 11-Controlling Law and Venue

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of South Dakota, without regard to any conflicts of law provisions. Parties agree to submit to the exclusive venue and jurisdiction of the State of South Dakota, 7th Judicial Circuit, Pennington County.

Section 12-Severability

Any unenforceable provision herein shall be amended to the extent necessary to make it enforceable; if not possible, it shall be deleted and all other provisions shall remain in full force and effect.

Section 13—Funds Appropriation

If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this agreement, this agreement shall impose no obligation on the City for payment. This agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of the Engineer, its successors or assignees, for any further payments. For future phases of this or any project, project components not identified within this contract shall not constitute an obligation by the City until funding for that component has been appropriated.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

City of Rapid City:

Burns & McDonnell Engineering Company, Inc.:

Jason Salamun, Mayor

Spencer Cronin

DATE: _____

DATE: _____

ATTEST:

Daniel Ainslie, Finance Director

DATE: _____



Reviewed By:

Stacey P. Titus, P.E., Project Manager

DATE: _____

**CITY'S DESIGNATED PROJECT
REPRESENTATIVE**

NAME: Stacey P. Titus, P.E.
PHONE: (605) 394-4165
EMAIL: Stacey.titus@rcgov.org

**ENGINEERING FIRM'S DESIGNATED
PROJECT REPRESENTATIVE**

NAME: Luke Rodig, P.E.
PHONE: (605) 271-4097
EMAIL: larodig@burnsmcd.com



EXHIBIT A
SCOPE OF PROFESSIONAL
SERVICES FOR
Alternate Fuel Landfill Diversion
Program Evaluation
Project No. 2803 / CIP No. 51424

PROJECT DESCRIPTION

The City of Rapid City (hereinafter referred to as City) Public Works Department, Solid Waste Division has requested Burns & McDonnell Engineering Company, Inc. (Burns & McDonnell, hereinafter referred to as Consultant) to provide consulting services for evaluating the Alternate Fuel Landfill Diversion Program (Program) between the City and GCC Dacotah, Inc (GCC). The objective of these consulting services is to provide the City guidance, input, recommendations, and risk management considerations for the proposed Program.

SCOPE OF PROFESSIONAL SERVICES

1. Draft Memorandum of Understanding

- 1.1. Consultant will prepare a draft Memorandum of Understanding (MOU) for the Program for City review. The MOU will identify objectives of the Program and establish roles and responsibilities of the City and GCC for completing the Program Evaluation. Consultant will coordinate and attend an MOU review meeting with the City team, as well as a separate review meeting with the City and GCC. This task will be a lump sum fee of \$7,800.

2. Alternate Fuel Landfill Diversion Program Evaluation

Services for the Program evaluation will be performed on an as-requested basis. The proposed subtasks represent potential scope tasks that may be requested of the Consultant.

2.1. General Document Review and Data Gathering

- a. Consultant will review applicable documents (i.e., memorandum of understanding, financial pro-forma spreadsheets, and other data) provided by the City and/or GCC. Consultant will share any insights it develops or suggestions Consultant may have regarding GCC's documents, assumptions, and overall approach to the Program. The consultation will be communicated to the City through verbal discussions with the City, email response, and where applicable through review comments within electronic documents.
- b. Consultant will gather and provide applicable information (i.e., tonnage report data, cost-of-service data, etc.) from the Solid Waste Master Plan to GCC.
- c. Consultant will coordinate data sharing and review items with City.

2.2. Facility Assessment

- a. Consultant will attend a facility site visit to visually assess the MRF and CCF facilities for potential upgrades needed to repurpose the facilities for AF program operations. Representatives are anticipated to include the Consultant Project Manager, Lead Structural Engineer, and Construction professional. Consultant will provide a written summary of observations, recommendations, and/or considerations for the MRF and CCF facilities relative to the AF program operations. This task will be a lump sum fee of \$18,620.

EXHIBIT A

2.3. Meetings and Site Visits

- a. Consultant will coordinate and attend coordination meetings with City and/or GCC. It is anticipated that coordination meetings will be virtual through Microsoft Teams.
- b. Consultant will attend in-person facility site visit(s) on an as-needed basis to meet with City project team and operations staff, as well as GCC representatives.
- c. Consultant will participate in preparation and presentations to City Council or other stakeholders.

2.4. Conceptual Planning and Financial Evaluations

- a. Consultant will identify and evaluate potential capital and operational impacts to the City's Solid Waste Division for implementation of the Program. This may include changes/improvements in traffic and waste flow through the solid waste facility, site infrastructure upgrades, adjustments for diverting select waste loads to the Program, potential changes for recycling collection and processing, landfill airspace and remaining life calculations, identify solid waste permitting needs, and other considerations for Program viability and implementation. Deliverables for this task include memorandum(s) summarizing impacts and findings, a table with planning level capital improvement program (CIP) project descriptions and estimated budgets, and conceptual figures outlining potential site or facility upgrades.
- b. Consultant will evaluate proposed impacts of the Program with the cost-of-service model for the City's Solid Waste Division and review potential rate adjustment impacts or other funding solutions with the City project team.
- c. Consultant will participate in applicable regulatory pre-permitting coordination and meeting as applicable to identify solid waste permit requirements for the Program. This task may include one meeting in Pierre to meet with the DANR. Applicable permitting requirements and responsible parties will be identified.

2.5. Agreement Review and Risk Mitigation Plan

- a. Consultant will review and assist with drafting applicable Program agreement documents between the City and GCC. As part of the agreement review, Consultant will identify key risks for the City and assist with developing mitigation strategies.

SCHEDULE

Consultant anticipates consulting services to be performed through December 6, 2024. Individual task schedules will be coordinated and agreed upon with the City project team.

ASSUMPTIONS

1. Task 1 is to be completed on a Lump Sum basis based on the assumed number of meetings within the task scope. Task 2.2 will be completed on a Lump Sum basis. All other tasks are to be performed on a time and materials basis based on requests made by City Project Manager with an estimated level of effort to be established mutually agreed upon by Consultant and City Project Manager prior to proceeding with the tasks. The budgets provided in Exhibit B for the time and materials tasks are estimates, and may be reallocated between tasks.
2. Consultant will not complete final design services, bid phase services, construction phase services, or special inspections. Conceptual planning level design is included as noted in Scope of Services.
3. Consultant will not conduct code reviews or design standards reviews.

EXHIBIT A

4. Consultant will not confirm accuracy of GCC's design drawings, specifications, or calculations.
5. Data and reports provided to Consultant by the City or GCC or their respective designee will be considered in the evaluation, however Consultant assumes the provided information to be accurate without independent verification. If discrepancies in data are discovered, Consultant will notify the City.
6. Consultant is not responsible for obtaining and complying with City of Rapid City, Pennington County, State of South Dakota, EPA, or federal air quality and water quality permitting.
7. Consultant will not provide legal advice or legal opinions.
8. No surveying, geotechnical investigation, material sampling or laboratory analysis services are included.

EXHIBIT B

**Burns & McDonnell
Cost Estimate Summary Sheet**

**City of Rapid City
Alternate Fuel Landfill Diversion Eval
Project No. 2803 /CIP No. 51424
Exhibit B**

Task No	Activity	Labor Fee	Total Expense Fee¹	Total Task Fee
1.0	Draft MOU			
1.1	Draft MOU		Lump Sum Task	\$7,800.00
2.0	Alternate Fuel Landfill Diversion Program Evaluation			
2.1	General Document Review and Data Gathering	\$11,100.00	\$0.00	\$11,100.00
2.2	Facility Assessment		Lump Sum Task	\$18,620.00
2.3	Meetings and Site Visits	\$31,500.00	\$2,940.00	\$34,440.00
2.4	Conceptual Planning and Financial Evaluations	\$69,050.00	\$30.00	\$69,080.00
2.5	Agreement Review and Risk Mitigation Plan	\$18,660.00	\$0.00	\$18,660.00
Totals:		Total Estimated Fee:		\$159,700.00

1. Expenses include estimated printing, travel, and other associated expenses.

EXHIBIT C

Schedule of Hourly Professional Service Billing Rates

<u>Position Classification</u>	<u>Classification Level</u>	<u>Hourly Billing Rate</u>
General Office *	5	\$72.00
Technician *	6	\$92.00
Assistant *	7	\$111.00
	8	\$152.00
	9	\$181.00
Staff *	10	\$204.00
	11	\$223.00
Senior	12	\$252.00
	13	\$273.00
Associate	14	\$281.00
	15	\$283.00
	16	\$285.00
	17	\$289.00

NOTES:

1. Position classifications listed above refer to the firm's internal classification system for employee compensation. For example, "Associate", "Senior", etc., refer to such positions as "Associate Engineer", "Senior Architect", etc.
2. The services of contract/agency and/or any personnel of a Burns & McDonnell parent, subsidiary or affiliate shall be billed to Owner according to the rate sheet as if such personnel is a direct employee of Burns & McDonnell.
3. The rates shown above are effective for services through December 31, 2024, and are subject to revision thereafter.

EXHIBIT C
Schedule of Reimbursable Expenses

Description	Unit Cost
Personal Mileage	Prevailing Federal Rate
Travel - Airfare and Rental Car	At Cost
Lodging and Meals	At Cost
Specialty Printing	At Cost