

**Date:** 8/31/2022

**Client:** Mr. Kevin Kuchenbecker, Interim Public Works Director  
City of Deadwood  
108 Sherman Street  
Deadwood, SD 57732

**Engineer:** Mr. Michael Towey, PE  
Towey Design Group, Inc.  
475 Villa Drive, Suite #3  
Box Elder, SD 57719

**RE:** City of Deadwood – Water Demands Modeling and Preliminary Planning Project

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Dear Kevin,

Thank you for the opportunity to provide our proposal to you for preliminary design services needed for the proposed City of Deadwood – Water Demands Modeling and Preliminary Planning Project. Based on our discussion of the project with your team, we have prepared the following proposal for your review and consideration.

### **Project Understanding**

Our understanding of the project is as follows.

- The City of Deadwood is in the early stages of seeing some major growth. Several new subdivisions have been brought forward to city staff and the City is concerned that they may not have enough storage with the future increased demands.
- Several new subdivisions have requested connection to city water and several existing subdivisions have expressed interest in connecting to city water.
- The City currently has 6 reservoirs throughout the area with an estimated operating storage capacity of 2.386 million gallons. The elevation difference between the 6 reservoirs is ~ 346 feet suggesting the system spans 2 or 3 different pressure zones.

TDG has prepared this design services proposal in conjunction with the project documents. Our scope of work and breakdown of fees is summarized as follows.

### **Task 1 – Preliminary Modeling Task –**

This task consists of all services necessary to take the project from beginning through the Modeling Phase.

- TDG will collect and review background information and existing project as-built site data as available and provided by the City.
- TDG will convert all available GIS data to AutoCAD files in order to develop a useable model.
- TDG will visit the project site to gather pertinent “as installed” field data and site photos. We will more than likely want to visit any PRV’s, booster pump stations, etc. in order to better understand the entire system.
- TDG will prepare and develop a functional EPANET model of the city water system based on information taken from the GIS data, walkthroughs with City staff, and other regional

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- information. We should be able to calibrate the model to existing or new fire hydrant test results.
- TDG will analyze the existing system with the proposed future improvements.
  - TDG will prepare a Technical Memorandum to the City for initial review. The memorandum will include:
    - A comparison of the existing conditions model to several developed models such as – a comparison of the existing model today versus Boot Hill Subdivision at time of completion. This will be completed with all of the proposed subdivisions.
    - Additionally, a second comparison will be completed that adds the existing subdivisions that have previously discussed possibly connecting of connecting to City water.

### **Schedule**

TDG is prepared to start this project as soon as possible. We would anticipate start to finish; this project will take approximately 6 - 8 weeks following authorization from your team. Assuming an NTP by September 8<sup>th</sup>, we have prepared the following theoretical schedule:

- NTP – 9.8.22
- Kick-off meeting with City staff – week of 9.12.22
- Review and gather data – week of 9.19.22
- Acquire and convert data – week of 9.19.22
- Modeling complete – week of 10.10.22
- Draft memorandum due – week of 10.17.22
- Final memorandum due – week of 10.24.2022

### **Deliverables**

The following is a list of anticipated deliverables needed during the design portion of the project.

- Electronic PDF copies of all design submittals will be provided to City for review.
- A functional EPANET model of the existing system, if requested.

### **Data Provided by City Staff**

The following is a partial list of items to be requested by TDG staff in order to complete this task.

- GIS data of water system
- Data and or pumping records of all wells
- As-built drawings or O&M manuals of all booster pumps, PRVs, etc.
- Planning documentation for proposed subdivisions (or best available information)
- Any additional information determined during study as available.

### **Progress Payments**

Monthly progress payments shall be processed by City upon receipt of the claim as computed by the TDG based on work completed during the month per the hourly rates and allowable reimbursables as established in this proposal and approved by City. TDG traditionally invoices our clients on the last Saturday of each month.

### Design Fees

TDG proposes to complete this project on an hourly not-to-exceed basis. We have estimated our total fee for this project to be Twenty-Three Thousand Eight Hundred Seventy-Three Dollars and no cents (\$23,873.00). Insurance and W-9 documents can be provided as requested.

### Fee Breakout

The following table identifies our fee breakout for each task.

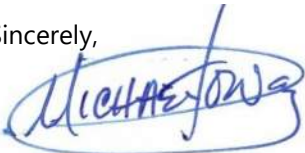
| Task            | Design             | REIM / Mile     | Sales Tax     | Subtotal           |
|-----------------|--------------------|-----------------|---------------|--------------------|
| Design Services | \$23,604.00        | \$269.00        | \$0.00        | \$23,873.00        |
| <b>Totals</b>   | <b>\$23,604.00</b> | <b>\$269.00</b> | <b>\$0.00</b> | <b>\$23,873.00</b> |

### Acceptance of this Proposal

TDG requests written acceptance of this proposal as listed in the Design Fees section, but the following actions shall constitute your acceptance of this proposal together with the Terms and Conditions and Amendments: 1) issuing an NTP or sub-consultant contract for any of the Services described above, or 2) written or electronic notification for TDG to proceed with any of the Services described in this proposal.

If these arrangements are acceptable, please sign below and return one copy to me, electronically. We are enthused about this project and look forward to working with you and your team members to effectively meet the needs of your development.

Sincerely,



Michael Towey, PE  
Towey Design Group, Inc.

ACCEPTED BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Exhibit A – TDG Standard Terms & Conditions  
Exhibit B – TDG Hourly Rates

## EXHIBIT A – STANDARD TERMS & CONDITIONS

The Agreement is supplemented to include the following terms and conditions:

### 1. Standard of Care

a. The standard of care for all professional services performed or furnished by TDG under this Agreement will be the care and skill ordinarily used by members of TDG's profession practicing under similar circumstances at the same time and in the same locality. TDG makes no warranties, express or implied, under this Agreement or otherwise, in connection with TDG's services.

b. CLIENT shall be responsible for, and TDG may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by CLIENT to TDG pursuant to this Agreement. TDG may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

### 2. Independent Contractor

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and TDG and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or TDG. TDG's services under this Agreement are being performed solely for CLIENT's benefit, and no other entity shall have any claim against TDG because of this Agreement or the performance or nonperformance of services hereunder.

### 3. Payments to TDG

Invoices will be prepared in accordance with TDG's standard invoicing practices and will be submitted to CLIENT by TDG monthly, unless otherwise agreed. Invoices are due and payable within **60** days of receipt. If CLIENT fails to make any payment due TDG for services and expenses within **90** days after receipt of TDG's invoice therefore, the amounts due TDG will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said **ninetieth** day. In addition, TDG may, after giving seven days written notice to CLIENT, suspend services under this Agreement until TDG has been paid in full all amounts due for services, expenses, and other related charges.

### 4. Insurance

TDG will maintain insurance coverage for Workers' Compensation, General Liability, and Automobile Liability and will provide certificates of insurance to CLIENT upon request.

### 5. Indemnification and Allocation of Risk

a. To the fullest extent permitted by law, TDG shall indemnify and hold harmless CLIENT, CLIENT's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of TDG or TDG's officers, directors, partners, employees, and consultants in the performance of TDG's services under this Agreement.

b. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless TDG, TDG's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable

fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CLIENT or CLIENT's officers, directors, partners, employees, and consultants with respect to this Agreement.

c. In addition to the indemnity provided under paragraph 5.b. of this Exhibit, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless TDG and TDG's officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this paragraph 5.c. shall obligate CLIENT to indemnify any individual or entity to the extent of that individual or entity's own negligence or willful misconduct.

d. ~~To the fullest extent permitted by law, TDG's total liability to CLIENT and anyone claiming by, through, or under CLIENT for any injuries, losses, damages and expenses caused in part by the negligence of TDG and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that TDG's negligence bears to the total negligence of CLIENT, TDG, and all other negligent entities and individuals.~~

e. ~~The indemnification provision of Paragraph 5.a. is subject to and limited by the provisions agreed to by CLIENT and TDG in Paragraph 7, "Limit of Liability," of this Agreement.~~

### 6. Exclusion of Special, Incidental, Indirect, and Consequential Damages

~~To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, TDG and TDG's officers, directors, partners, employees, agents, and Consultants, or any of them, shall not be liable to CLIENT or anyone claiming by, through, or under CLIENT for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to a Specific Project, Task Order, or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranties, express or implied, of TDG or TDG's officers, directors, partners, employees, agents, or TDG's Consultants, or any of them.~~

### 7. Limit of Liability

~~To the fullest extent permitted by law, notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of TDG and TDG's officers, directors, partners, employees, agents, and TDG's Consultants, and any of them, to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of TDG or TDG's officers, directors, partners, employees, agents, or TDG's Consultants, or any of them, shall not exceed the maximum amount under TDG's insurance.~~

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## 8. Termination of Contract

Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, CLIENT shall pay to TDG all amounts owing to TDG under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.

## 9. Access

CLIENT shall arrange for safe access to and make all provisions for TDG and TDG's Consultants to enter upon public and private property as required for TDG to perform services under this Agreement.

## 10. Hazardous Environmental Conditions

It is acknowledged by both parties that TDG's scope of services does not include any services related to a "Hazardous Environmental Condition," i.e. the presence at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Assignment. In the event TDG or any other party encounters a Hazardous Environmental Condition, TDG may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with applicable laws and regulations. CLIENT acknowledges that TDG is performing professional services for CLIENT and that TDG is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with TDG's activities under this Agreement.

## 11. Patents

TDG shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.

## 12. Client Ownership and Reuse of Documents

All documents prepared or furnished by TDG pursuant to this Agreement are instruments of service, and TDG shall retain an ownership and property interest therein. Reuse of any such documents by CLIENT shall be at CLIENT's sole risk; and CLIENT agrees to indemnify, and hold TDG harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by CLIENT or by others acting through CLIENT.

## 13. Use of Electronic Media

a. Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by TDG. Files in electronic media format of text, data, graphics, or of other types that are furnished by TDG to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

b. When transferring documents in electronic media format, TDG makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by TDG at the beginning of this Assignment.

c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. TDG shall not be responsible to maintain documents stored in electronic media format after acceptance by CLIENT.

## 14. Force Majeure

TDG shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond TDG's reasonable control.

## 15. Assignment

Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.

## 16. Binding Effect

This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.

## 17. Severability and Waiver of Provisions

Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and TDG, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

## 18. Survival

All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

## 19. Headings

The headings used in this Agreement are for general reference only and do not have special significance.

## 20. Controlling Law

This Agreement is to be governed by the law of the State of South Dakota.

## 21. Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

## EXHIBIT B

### 2022 Hourly Rate Schedule

#### STAFF

|                                  |          |
|----------------------------------|----------|
| Principal .....                  | \$123.00 |
| Professional Engineer II .....   | \$112.00 |
| Professional Engineer I .....    | \$98.00  |
| Construction Observer .....      | \$90.00  |
| Engineer In Training III .....   | \$88.00  |
| Engineer In Training II .....    | \$78.00  |
| Engineer In Training I .....     | \$68.00  |
| Engineering Technician III ..... | \$86.00  |
| Engineering Technician II .....  | \$80.00  |
| Engineering Technician I .....   | \$70.00  |
| Engineering Intern III .....     | \$88.00  |
| Engineering Intern II .....      | \$78.00  |
| Engineering Intern I .....       | \$68.00  |
| Administrative .....             | \$62.00  |

#### REIMBURSABLES

|                      |        |
|----------------------|--------|
| Mileage .....        | \$0.58 |
| Prints/Copies .....  | cost   |
| Travel/Lodging ..... | cost   |

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