

**Albertson Engineering Inc.**

3202 W. Main Street, Suite C  
Rapid City, SD 57702

**An Agreement Between Owner  
and Structural Engineer of Record  
for Professional Services**

March 10, 2023

*Structural Engineer (SER):*

Albertson Engineering, Inc.  
3202 West Main, Suite C  
Rapid City, SD 57702

Kevin Kuchenbecker  
City of Deadwood  
108 Sherman Street  
Deadwood, SD 57735

Project Name: Retaining Wall Replacement/Repair Open End Contract for 2023  
Project Location: Deadwood, South Dakota  
SER Project #: 2023-083

**PROJECT DESCRIPTION**

For calendar year 2023, design of retaining wall replacements and/or repairs at several locations to be determined by Historic Preservation Officer and Building Official for the City of Deadwood.

**SCOPE OF SERVICES**

The Structural Engineering Services to be provided are described in the Summary of Services (Exhibit A) and Terms and Conditions (Exhibit B). Included Additional Services (Exhibit B, Paragraph 3.1.1 and 3.1.2) are specifically noted in Exhibit A.

This Agreement is for services performed during calendar year 2023.

**ENGINEERING CHARGES**

Compensation for our services shall be:

Services are to be billed at the SER's current standard hourly rate not to exceed Seventy-Five Thousand Dollars (\$75,000.00) plus applicable taxes and reimbursable expenses.

The SER's current standard hourly rate schedule is:

Senior Principal	\$185/hr
Principal	\$165/hr
Senior Engineer	\$165/hr
Project Engineer	\$135/hr
Professional Engineer	\$125/hr
EIT	\$105/hr
BIM Technician II	\$105/hr

BIM Technician I	\$85/hr
Engineering Intern	\$70/hr
Clerical	\$50/hr

The engineering charges stated above shall be subject to renegotiation if the project becomes a Fast Track Project.

## REIMBURSABLE EXPENSES

Reimbursable expenses (e.g., mileage, postage, copying) as described in the Terms and Conditions shall be billed as a multiple of 1.0 times the cost incurred plus any applicable taxes. Subconsultant expenses shall be billed as a multiple of 1.15 times the cost incurred plus any applicable taxes.

## ADDITIONAL PROVISIONS


This Agreement, and Exhibits A & B hereto, constitute the entire agreement between the parties.

This Agreement terminates all prior Open End Contracts between Albertson Engineering Inc. and City of Deadwood.

This Agreement and will remain in effect until March 31, 2024 unless terminated prior.

## AUTHORIZED ACCEPTANCE

by Structural Engineer  
of Record (SER)

  
\_\_\_\_\_  
Signature

Mike Albertson, President  
\_\_\_\_\_  
Print Name and Title

3/10/2023  
\_\_\_\_\_  
Date

by Owner

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

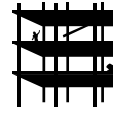


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# An Agreement Between Owner and Structural Engineer of Record for Professional Services©

Prepared by the Council of American Structural Engineers (CASE Document 2-1996)



**Albertson Engineering Inc.**

## EXHIBIT A — Summary of Services

This is an exhibit attached to and made a part of the letter of agreement dated February 27, 2023 between the Structural Engineer of Record (SER), Albertson Engineering Inc., and City of Deadwood (Owner).

The services of the Structural Engineer of Record for this proposal may include those summarized below. See Exhibit B - Terms and Conditions - for further details.

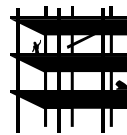
Basic Services	Included	Not Included	Remarks
<b>PROJECT DEVELOPMENT PHASE</b>	<b>X</b>		
1. Define Scope of Structural Services	<b>X</b>		
2. Assist in Development of Schedule	<b>X</b>		
3. Assist in Determining Channels of Communication	<b>X</b>		
4. Assist in Determining Number of Meetings and Number of Site Visits			
<b>CONTRACT DOCUMENTS PHASE</b>	<b>X</b>		
1. Prepare Structural Design of Primary Structural System	<b>X</b>		
2. Designate Elements to be designed by Specialty Engineers, and Specify Structural Criteria for Specialty Engineers Design of Pre-Engineered Structural Elements.	<b>X</b>		
3. Review Effect of Secondary or Non-Structural Elements Attached to Primary Structural System	<b>X</b>		
4. Attend Meetings	<b>X</b>		
5. Assist in Coordination with Building Code Officials	<b>X</b>		
6. Complete Structural Calculations	<b>X</b>		
7. Complete Structural Drawings	<b>X</b>		

<b>Basic Services (continued)</b>	<b>Included</b>	<b>Not Included</b>	<b>Remarks</b>
8. Prepare or Edit Specifications for the Primary Structural System (on drawings)	<b>X</b>		
9. Assist in Establishing Testing and Inspection Requirements	<b>X</b>		
10. Perform Checking and Coordination of the Structural Documents	<b>X</b>		
<b>CONSTRUCTION ADMINISTRATION PHASE</b>  1. Bidding and Award a. Assist Evaluating Bidder's Qualifications	<b>X</b>		
b. Provide Structural Addenda and Clarifications	<b>X</b>		
c. Assist in Bid Evaluation	<b>X</b>		
2. Pre-Construction Services a. Attend Meetings	<b>X</b>		
b. Assist in Establishing Communications Procedures	<b>X</b>		
c. Assist in Establishing Procedures for Testing and Inspections	<b>X</b>		
d. Assist in Confirming Submittal Procedures	<b>X</b>		
e. Assist in Selection of Testing Agency	<b>X</b>		
f. Advise Client and Contractor Which Structural Elements Require Construction Observation by SER	<b>X</b>		
g. Respond to Building Department and Peer Reviewer Comments	<b>X</b>		
3. Submittal Review a. Review Specified Submittals for Items Designed by SER b. Review Submittals for Pre-Engineered Structural Elements	<b>X</b>		

<b>Basic Services (continued)</b>	<b>Included</b>	<b>Not Included</b>	<b>Remarks</b>
4. Site Visits a. Make Site Visits at Intervals Appropriate to the Stage of Construction b. Prepare Site Visit Reports	<b>X</b>		
5. Materials Testing and Inspection a. Review Testing and Inspection Reports b. Initiate Appropriate Action to Those Reports, if required	<b>X</b>		

## **ADDITIONAL SERVICES**

I. Prepare and/or process typical construction administration items such as pay requests, requests for information, change orders, substantial completion.



**Albertson Engineering Inc.**

# An Agreement Between Owner and Structural Engineer of Record for Professional Services©

Prepared by the Council of American Structural Engineers (CASE Document 2-1996)

## EXHIBIT B - Terms and Conditions

This is an exhibit attached to and made a part of the agreement dated April 28, 2022 between the Structural Engineer of Record (SER), Albertson Engineering Inc., and City of Deadwood (Owner).

### Section I - General

#### 1.1 This Agreement

- 1.1.1 These Terms and Conditions, along with the Agreement, and Exhibit A - Summary of Services, form the Agreement as if they were part of one and the same document. Unless otherwise specified, this Agreement shall be governed by the laws of the principal place of business of the Structural Engineer of Record (SER).
- 1.1.2 The Agreement and Exhibit A may limit or negate the applicability of these Terms and Conditions. Such limitation shall take precedence over provisions of this Exhibit.

#### 1.2 General Obligations of the SER and the Owner

- 1.2.1 Albertson Engineering Inc., hereinafter referred to as the Structural Engineer of Record (SER), shall perform those professional structural engineering services as specified in Exhibit A and detailed in these Terms and Conditions. In rendering these services, the SER shall apply the skill and care ordinarily exercised by structural engineers at the time and place the services are rendered.
- 1.2.2 The Owner shall verify that the contemplated project will be financed adequately, including provisions for contingencies, to accomplish the stated and desired goals and commitments.
- 1.2.3 The Owner shall provide all criteria and full information with regard to his or her requirements for the Project and shall designate a person to act with authority on his or her behalf with respect to all aspects of the Project. This shall include, but not be limited to, review and approval of design issues in the contract documents phase.
- 1.2.4 The SER shall recommend that the Owner obtain those geotechnical investigations, property surveys, reports and other data necessary for performance of the SER's services. Those services may be provided under this contract if requested by owner.

- 1.2.5 The SER shall designate a person to act with authority on his or her behalf with respect to all aspects of the Project.

- 1.2.6 The Owner shall provide to the SER reports of geotechnical investigations, property surveys, and other reports and data requested, if available, as well as any previous reports or other data relative to the Project.

#### 1.3 Definitions

- 1.3.1 Primary Structural System is the completed combination of elements, which serve to support the self weight, the applicable live load (which is based upon the occupancy and use of the spaces), the environmental loads such as wind and thermal, plus the seismic loading.

- 1.3.2 Pre-Engineered Structural Elements are structural elements, which are specified by the SER but may be designed by a Specialty Engineer. These elements are normally fabricated off-site, may require specialized equipment not usually available at the job site or could require a proprietary process. The SER shall specify the design criteria including the incorporation of the Pre-Engineered Structural Elements into the structure.

Examples of Pre-Engineered Structural Elements may include but are not limited to:

- a. Open web steel joists and joist girders.
- b. Wood trusses.
- c. Combination wood and metal, and plywood joists.
- d. Precast concrete elements.
- e. Prefabricated wood or metal buildings.
- f. Tilt-up concrete panel reinforcement and hardware required for lifting to position.

- 1.3.3 Specialty Engineer is an engineer who is legally responsible for sealing plans and designs for Pre-Engineered Structural Elements, which become part of the building. The Specialty Engineer is usually retained by a supplier or subcontractor who is responsible for the design, fabrication and (sometimes) installation of engineered elements.

- 1.3.4 Secondary Structural Elements are elements that are structurally significant for the function they serve but do not contribute to the strength or stability of the primary structure designed.

- 1.3.5 Reimbursable Expenses are expenses incurred directly or indirectly in connection with the project such as, but not limited to, transportation, meals and lodging for travel, long distance telephone calls and facsimile transmissions, overnight deliveries, courier services, professional services sales taxes, and the cost of reproductions beyond those normally required for coordination and information purposes.

- 1.3.6 Fast Track Projects are projects in which any portion of the contract drawings are released for

pricing/ bid/fabrication, or are submitted for building permit prior to such issuance of full design team documents.

Prepare construction observation reports.

## Section 3 - Additional Services

### Section 2 - Basic Services

#### 2.1 General

- 2.1.1 The Basic Services of the SER shall include the analysis of, design of, preparation of drawings and specifications for; review of structural submittals related to; and construction observation of the Primary Structural System, as designated in Exhibit A.
- 2.1.2 Provide Structural criteria for Pre-Engineered Structural Elements, if required by Exhibit A. This includes the type of element, position within the structure, connection to the Primary Structural System, the loading and deflection criteria, and the required shop drawing and calculation submittal requirements
- 2.1.3 Review the effect of Secondary elements on the Primary Structural System and design the Primary Structural System to accept and support such items. The contract documents shall provide information regarding the supporting capability and physical attachment limitations of the Primary Structural System.
- 2.1.4 Submittal Review:

Review specified Submittals pertaining to items designed by the SER. Determine whether Submittals have received prior approvals as required by the Contract Documents. Review of Submittals shall be for general conformance with the information given and design concept expressed in the Structural Contract Documents.

Review submittals pertaining to Pre-Engineered Structural Elements specified by the SER and designed by Specialty Engineers. Determine whether Submittals have received prior approvals as required by the Contract Documents. Determine whether Submittals bear the signature and professional seal of the Specialty Engineer responsible for the design as required by the Contract Documents. Review of Pre-Engineered Structural Elements shall be for type, position, and connection to other elements within the Primary Structural System, and for criteria and loads used for their design. Review shall include determination that structural elements necessary for a stable structure will be provided.
- 2.1.5 Construction Observation:

Make site visits at intervals appropriate to the stage of construction and as defined by the Contract to observe and become generally familiar with the quality and the progress of the construction work relative to the Primary Structural System.

#### 3.1 General

- 3.1.1 Services beyond those outlined under Basic Services may be requested. These services may be provided by the SER under terms mutually agreed upon by the Client and the SER.
- 3.1.2 Special Services are services that may or may not be foreseen at the beginning of design stages, and are not normally included as Basic Services. Examples include, but are not limited to:
  - 1) Tenant-related design services.
  - 2) Services related to special dynamic analyses such as spectrum or time-history response to seismic forces, or floor-response analysis for footfall or vibratory equipment.
  - 3) Services related to special wind analyses, such as wind-tunnel tests, etc.
  - 4) Services related to "seismic risk" analysis.
  - 5) Studies of various schemes to accommodate special energy requirements.
  - 6) Services connected with the preparation of documents for alternate bids or for segregated contracts for phased or fast track construction.
  - 7) Continuous and/or detailed inspections of construction.
  - 8) Design or field observations of shoring and bracing for excavations and buildings, or underpinning of adjacent structures.
  - 9) Design or review related to contractor's construction related equipment, e.g., cranes, hoists, etc.
  - 10) Design of swimming pools.
  - 11) Design for future expansion.
  - 12) Filing application for and obtaining a building permit.
  - 13) Preparation of "as-built" or record set of drawings.
  - 14) Preparation of shop or fabrication drawings, for example, tilt-up wall panel drawings, reinforcing and structural steel detailing, etc.
  - 15) Review and determination of structural fire resistance requirements.
  - 16) Providing construction observations in excess of those required determining if construction is in general conformance with the structural portions of the construction documents.

- 3.1.3 Extra Services - These are services that arise as a result of unforeseen circumstances during the design or construction process.

Examples include, but are not limited to:

- 1) Services resulting from changes in scope or magnitude of the project as described and agreed to under the Basic Services Agreement.
- 2) Services resulting from changes necessary because of a construction cost over-run, which is outside the control of the SER.
- 3) Services resulting from revisions, which are inconsistent with approvals or instructions previously given by the Client.
- 4) Services resulting from revisions due to the enactment or revision of codes, laws, or regulations subsequent to the start of preparation of construction documents.
- 5) Services resulting from Change Orders.
- 6) Services resulting from corrections or revisions required because of errors or omissions in construction by the building contractor or in design by consultants other than the SER.
- 7) Services resulting from construction procedures over which the SER has no control.
- 8) Services due to extended design or construction time schedules.
- 9) Services, including assisting in preparation for litigation or arbitration as witnesses or consultants, in connection with any public hearing, arbitration, or legal proceedings with respect to the project.
- 10) Services resulting from damage, as the result of fires, man made disasters, or acts of God.
- 11) Review and design of alternate or substitute systems.
- 12) Review of additional shop drawing submittals when occasioned by improper or incomplete submittals.
- 13) Attendance at construction progress meetings.
- 14) Overtime work required by the Contractor.
- 15) Services rendered for special foundations when the discovery of poor soil conditions is made after execution of this Agreement. Examples include, but are not limited to: deep foundations, mat footings, structural grade slabs, and grade beams.

## **Section 4 - Fees and Payments**

### **4.1 Fees and Other Compensation**

- 4.1.1 Fees for Basic Services, Additional Services and Compensation for Reimbursable Expenses are set forth in the Letter Agreement.

### **4.2 Payments on Account**

- 4.2.1 Invoices for the SER's services shall be submitted, at the SER's option, either upon completion of any phase of service or on a monthly basis. Invoices shall be payable when rendered and shall be considered PAST DUE if not paid within 30 days after the invoice date.
- 4.2.2 Retainers, if applicable to this Project, shall be credited to the final invoice(s).
- 4.2.3 Any inquiry or questions concerning the substance or content of an invoice shall be made to the SER in writing within 10 days of receipt of the invoice. A failure to notify the SER within this period shall constitute acknowledgement that the service has been provided.

### **4.3 Late Payments**

- 4.3.1 A service charge will be charged at the rate of 1.5% (18% true annual rate) per month or the maximum allowable by law on the then outstanding balance of PAST DUE accounts. In the event any portion of an account remains unpaid 90 days after billing, the Owner shall pay all costs of collection, including reasonable attorney's fees.
- 4.3.2 In the event that any portion of an account remains unpaid 30 days after billing, the SER may, without waiving any claim or right against the Owner, and without liability whatsoever to the Owner, suspend or terminate the performance of all services.

## **Section 5 - Insurance, Indemnifications & Risk Allocation**

### **5.1 Insurance**

- 5.1.1 The SER shall secure and endeavor to maintain professional liability insurance, commercial general liability insurance and automobile liability insurance to protect the SER from claims for negligence, bodily injury, death, or property damage which may arise out of the performance of the SER's services under this Agreement, and from claims under the Workers' Compensation Acts. The SER shall, if requested in writing, issue certificate confirming such insurance to the Owner.
- 5.1.2 Albertson Engineering Inc. shall maintain professional liability insurance coverages with limits no less than \$1,000,000 per claim, \$1,000,000 aggregate. The policy's retroactive date must be not later than the date that Professional Services commenced under the terms of this contract and Albertson Engineering Inc. must continue cover coverage for a period of not less than two years after all Professional Services under the terms of this contract are completed.



## 5.2 Indemnifications

- 5.2.1 The Owner shall indemnify and hold harmless the SER and all of its personnel, from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the performance of the services, provided that any such claims, damage, loss or expense are caused in whole or in part by the negligent act or omission and/or strict liability of the Owner, anyone directly or indirectly employed by the Owner (except the SER) or anyone for whose acts any of them may be liable. The obligation to indemnify and hold harmless does not include a duty to defend.
- 5.2.2 The SER shall indemnify and hold harmless the Owner and its personnel from and against any and all claims, damages, losses, and expenses (including reasonable attorney's fees) to the extent they are caused by the negligent act, error, or omission by the SER in performance of its services under this Agreement. The obligation to indemnify and hold harmless does not include a duty to defend.

## Section 6 - Miscellaneous Provisions

### 6.1 Reuse of Documents

- 6.1.1 All documents including calculations, computer files, drawings, and specifications prepared by the SER pursuant to this Agreement are instruments of professional service intended for the one-time use in construction of this project. They are and shall remain the property of the SER. Any reuse without written approval or adaptation by the SER is prohibited.

### 6.2 Opinion of Probable Construction Costs

- 6.2.1 The SER's opinion of probable construction costs, if rendered as a service under this Agreement, is based on assumed labor costs and approximates quantities of material and equipment, and therefore is of a conditional character. The SER cannot guarantee the cost of work to be performed by others since market or bidding conditions can change at any time and changes in the scope or quality of the Project may affect estimates.

### 6.3 Hidden Conditions

- 6.3.1 A structural condition is hidden if concealed by existing finishes or if it cannot be investigated by reasonable visual observation. If the SER has reason to believe that such a condition may exist, the SER shall notify the client who shall authorize and pay for all costs associated with the investigation of such a condition and if necessary, all costs necessary to correct said condition. If (1)

the client fails to authorize such investigation or correction after due notification, or (2) the SER has no reason to believe that such a condition exists, the client is responsible for all risks associated with this condition, and the SER shall not be responsible for the existing condition nor any resulting damages to persons or property.

### 6.4 Termination, Successors and Assigns

- 6.4.1 This agreement may be terminated upon 10 days written notice by either party should the other fail to perform its obligations hereunder. In the event of termination, the Owner shall pay the Engineer for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.
- 6.4.2 The Owner and the SER each binds himself or herself, partners, successors, executors, administrators, assigns and legal representative to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representative of such other party in respect to all covenants, agreements, and obligations of this Agreement.
- 6.4.3 Neither the Owner nor the SER shall assign, sublet or transfer any rights under or interest in (including but without limitations, monies that may be due or monies that are due) this Agreement, without the written consent of the other, except as stated in the paragraph above, and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assigner from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the SER from employing such independent consultants, associates and subcontractors, as he or she may deem appropriate to assist in the performance of services hereunder.

### 6.5 Disputes Resolution

- 6.5.1 All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be presented to non-binding mediation, subject to the parties agreeing to a mediator(s).