

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between **City of Deadwood** (Owner) and **West Plains Engineering** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **Upper Main Street Underground Utilities** (Project). Engineer's services under this Agreement (Services) are generally identified as **electrical design to convert overhead utilities both power and telecom to underground along Upper Main Street in Deadwood**.

Owner and Engineer further agree as follows:

1.01 Services of Engineer

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

2.01 Owner's Responsibilities

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

3.01 Schedule for Rendering Services

- A. Engineer shall complete its Services within the following specific time period: **December 31, 2022**.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

4.01 Invoices and Payments

- A. Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.
- B. Payment: As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in this Paragraph 4.01, Invoices and Payments. If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.
- C. Failure to Pay: If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; (2) in addition Engineer may, after giving 7 days' written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges, and in such case Owner waives any and all claims against Engineer for any such suspension; and (3) if any payment due Engineer remains unpaid after 90 days, Engineer may terminate the Agreement for cause pursuant to Paragraph 5.01.A.2.
- D. Basis of Payment
 - 1. Lump Sum. Owner shall pay Engineer for Services as follows:
 - a. A Lump Sum amount of **\$32,500.00**
 - b. The portion of the compensation amount billed monthly for Engineer's Services will be based upon Engineer's estimate of the percentage of the total Services actually completed during the billing period.
- E. Additional Services: For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services. Engineer's standard hourly rates are attached as Appendix 1.

5.01 Termination

- A. Termination for Cause
 - 1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
 - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 5.01.A.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same,

then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. In addition to its termination rights in Paragraph 5.01.A.1, Engineer may terminate this Agreement for cause upon 7 days' written notice (a) if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional, (b) if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, (c) if payment due Engineer remains unpaid for 90 days, as set forth in Paragraph 4.01.C, or (d) as the result of the presence at the Site of undisclosed Constituents of Concern as set forth in Paragraph 6.01.I.
 3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.
 4. Owner will have no liability to Engineer on account of any termination by Owner for cause.
- B. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.
- C. Payments Upon Termination: In the event of any termination under Paragraph 5.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement, and to reimbursement of expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of all deliverable documents, whether completed or under preparation, subject to the provisions of Paragraph 6.01.F, at Owner's sole risk.
1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the deliverable documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
 2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, costs of terminating contracts with Engineer's subcontractors or subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Paragraph 4.01.E.

6.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions of probable construction cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents, other than those made by Engineer.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Engineer grants to Owner a limited license to use the deliverable documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the deliverable documents, and subject to the following limitations:
 - 1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 - 2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and subconsultants;
 - 3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
 - 4. such limited license to Owner shall not create any rights in third parties.

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

7.01 Definitions

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

to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8.01 Successors, Assigns, and Beneficiaries

A. Successors and Assigns

1. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 8.01.A.2 the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
2. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- B. Beneficiaries: Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

9.01 Total Agreement

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Attachments: Appendix 1, Proposal for Engineering Services
Appendix 2, Engineer's Standard Hourly Rates

This Agreement's Effective Date is **May __, 2022.**

Owner:

City of Deadwood

(name of organization)

By: _____
(authorized individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Phone: _____

Email: _____

Engineer:

West Plains Engineering, INC

(name of organization)

By: _____
(authorized individual's signature)

Date: _____
(date signed)

Name: Daren Beckloff, PE
(typed or printed)

Title: Power Division Manager
(typed or printed)

Address for giving notices:
1750 Rand Road
Rapid City, SD 57702

Designated Representative:

Name: Daren Beckloff
(typed or printed)

Title: _____
(typed or printed)

Address:

Phone: 605-348-7455

Email: Daren.beckloff@westplainsengineering.com

APPENDIX 1

Proposal for Engineering Services



RAPID CITY

1750 Rand Road • Rapid City, SD 57702
Ph: (605) 348-7455 ■ Fax (605) 348-9445

October 21, 2021

Robert Nelson
Public Works Director
City of Deadwood

Re: Proposal for Engineering Services
Upper Main Street Underground Utilities
Deadwood, SD

Dear Bob,

We appreciate the opportunity to submit the following proposal to provide engineering services for the conversion of overhead to underground utilities for the city of Deadwood. West Plains Engineering, Inc. (WPE) proposes to provide electrical engineering services, as outlined in the attached proposal.

If this is satisfactory, please sign and date on Page 4, returning one copy to this office and retaining the original for your records.

Thank you for requesting a proposal for this project. Our staff looks forward to the opportunity to work with you and is ready to commence at your convenience. If you have any questions, please do not hesitate to call.

Regards,

A handwritten signature in blue ink, appearing to read "Daren Beckloff".

Daren Beckloff, PE
Power Division Manager
West Plains Engineering, Inc.

AN ENGINEERING SOLUTION CENTER
westplainsengineering.com

RAPID CITY, SD ■ SIOUX FALLS, SD ■ BISMARCK, ND ■ CASPER, WY ■ CEDAR RAPIDS, IA

WEST PLAINS ENGINEERING, INC.

Scope of Work

The design shall include conversion of both primary and secondary overhead utilities, including power and telecom, to underground for the half mile section of Upper Main Street in Deadwood. This section includes both residential and commercial services. All overhead utility secondary services will be brought underground to each house or business. Coordination with utility providers Black Hills Power, Lumen, SDN, Midco, and Vast will be included. A primary trench with conduits will be included for both power and telecom services along the side of the street primarily under the sidewalks. Main route of the primary trench to be determined by Black Hills Power.

The scope shall include the following:

- Design of primary underground trench with conduits for each provider
- Design of underground trench for primary taps to pad mount equipment
- Design of underground utility service to each house or business
- Site evaluation of each meter housing for current NEC code compliance
- Design of new meter housing if required
- 90% Preliminary Review Set for city review
- Construction documents for design above including plans and specifications
- Coordination with utility service providers
- Coordination with civil engineer for sidewalk and street cuts as necessary
- Shop drawing reviews of electrical equipment
- (1) Construction Kickoff Meeting
- (2) Site Construction observations
- (1) Final Site observation to develop punch list items
- Final As-built or record drawing set as provided by contractor

PROPOSED EXCLUSIONS

- a) Civil engineering including survey.
- b) Site survey map in ACAD format by civil engineer to include underground and on-grade utilities.
- c) Front end bid contract specifications.
- d) Post bid value engineering involving associated redesign.
- e) Change orders resulting in change in scope as directed by the city. These can be negotiated beforehand based on the impact of the change in design.

WEST PLAINS ENGINEERING, INC.

Compensation

We propose to provide the services, as described above, for a lump sum fee of **(\$32,500.00)** plus taxes. This fee is broken down as follows:

Item	Sum
Electric Service Evaluation	\$ 6,500.00
Construction Documents	\$ 20,500.00
Construction Administration	\$ 5,500.00
TOTAL	\$ 32,500.00

Engineering Consultants fees will be billed on a monthly basis. Monthly billings will be based on the level of completion of engineering services, with respect to the above breakdown of services. Fees are due and payable upon Owner's receipt, and shall be paid within ten (10) days thereof. All unpaid accounts shall be charged interest at the rate of 1% per month.

Appendix 2

Engineer's Standard Hourly Rates

Schedule of Hourly Rates for
West Plains Engineering, Inc.

Principal		\$240.00/hr.
Office Manager	Beckloff	\$200.00/hr.
Project Manager	Groves	\$175.00/hr.
Senior Project Engineer / Designer		\$150.00/hr.
Project Engineer / Designer		\$130.00/hr.
Designer II		\$105.00/hr.
Designer	Hekima	\$85.00/hr.
Draftsperson II		\$75.00/hr.
Draftsperson		\$65.00/hr.
Administration / Clerical		\$60.00/hr.

Reimbursable Expenses

Auto Mileage	\$0.585/mile
Airplane Milage	\$1.25/mile
Meals	At Cost
Lodging	At Cost
Miscellaneous (i.e., outsourced printing, shipping etc.)	At Cost