



Albertson Engineering Inc.

October 12, 2021

Addendum No. 2 to:

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

between: Albertson Engineering Inc. and City of Deadwood, dated May 7, 2020.

for: Whitewood Creek Restoration (AEI project# 2020-096)

BACKGROUND:

At Site 4, 75% construction documents had recently been completed at the original site location chosen by City of Deadwood. As design progressed, it became evident that a more ideal site for the debris collection structure is downstream the originally selected location. As such, new geotechnical and survey services are now required at the new site. In addition, changing sites causes additional civil and structural work to complete the construction documents at the new location.

MODIFICATIONS to AGREEMENT:

ENGINEERING CHARGES first paragraph shall be changed to the following:

Overall compensation for our services shall be a lump sum of four hundred thirty one thousand two hundred sixty seven and 10 cents (\$431,267.10) plus all applicable taxes and reimbursable expenses.

Project 4 Subsection shall be changed to the following:

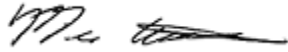
Project 4 – New Grizzly Structure near HWY 385 and HWY 85 Intersection

a) Construction Documents \$57,725

[end of contract modifications]

Please note that this Addendum adds a net fee increase to the project of \$20,000, all within the Construction Documents phase of Project 4. Sincerely,

Albertson Engineering Inc.



Mike Albertson, President

Approved by:

Signature

Name, Title

Date

ATTACHMENTS

1. An Agreement Between Owner and Structural Engineer of Record for Professional Services (Whitewood Creek Restoration dated May 7, 2020)
2. Contract Addendum 01 dated October 6, 2020.



Albertson Engineering Inc.



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**

May 7, 2020

Structural Engineer (SER):

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

City of Deadwood
108 Sherman Street
Deadwood, SD 57785

Project Name:
Project Location:
SER Project #:

Whitewood Creek Restoration
Deadwood, SD 57732
2020-362

PROJECT DESCRIPTION

As stated in the Proposal for Professional Design Services (Exhibit C) to City of Deadwood dated April 30, 2020. Entirety of project scope includes the services for five individual projects. Services for "Project 3" are limited to the Investigative Study only as defined in Exhibit C.

SCOPE OF SERVICES

The project scope is outlined in the Proposal for Professional Design Services (Exhibit C). Exhibit C is attached for scope of work reference only and any terms or conditions noted shall be overridden by the terms and conditions noted in the contract text, Exhibit A and Exhibit B in locations where conflicts occur.

The Professional Design Services to be provided are described in the Summary of Services (Exhibit A), Terms and Conditions (Exhibit B) and Proposal for Professional Design Services (Exhibit C). This agreement does not include services for Project Peer Review, Special Inspections, or Fast Track Design and Construction.

ENGINEERING CHARGES

Overall compensation for our services shall be a lump sum of three hundred two thousand three hundred sixty seven dollars and 10 cents (\$302,367.10) plus all applicable taxes and reimbursable expenses.

Albertson Engineering Inc.

Rapid City

3202 West Main, Suite C
Rapid City, SD 57702
605-343-9606

Sioux Falls

315 North Main Avenue, Suite 200
Sioux Falls, SD 57104
605-274-0880

Winner

202 South Main
Winner, SD 57580
605-343-6906

Design fees will be broken up per project as the following:

Project 1 – Creek Restoration along Parking Lot between Powerhouse Park and City Hall

1. A lump sum fee of one hundred twenty two thousand six hundred thirty four dollars and thirty cents (\$122,634.30) plus all applicable taxes and reimbursable expenses. Breakdown of phases is as follows:

a. Construction Documents	\$ 95,675.50
b. Bidding	\$ 6,791.00
c. <u>Construction Administration</u>	<u>\$ 20,167.80</u>
d. TOTAL	\$122,634.30

Project 2A – Creek Restoration directly upstream Powerhouse Park – North Bank

1. A lump sum fee of thirty seven thousand five hundred seventy eight dollars and fifty cents (\$37,578.50) plus all applicable taxes and reimbursable expenses. Breakdown of phases is as follows:

a. Construction Documents	\$25,497.50
b. Bidding	\$ 2,928.50
c. <u>Construction Administration</u>	<u>\$ 9,153.00</u>
d. TOTAL	\$37,578.50

Project 2B – Creek Restoration directly upstream Powerhouse Park – South Bank

1. A lump sum fee of seventy nine thousand one hundred seventy five dollars and thirty cents (\$79,175.30) plus all applicable taxes and reimbursable expenses. Breakdown of phases is as follows:

a. Construction Documents	\$55,198.00
b. Bidding	\$ 6,010.00
c. <u>Construction Administration</u>	<u>\$17,967.30</u>
d. TOTAL	\$79,175.30

Project 3 – Creek Restoration by Comfort Inn & Suites (Investigative Study only)

1. A lump sum fee of eleven thousand fifty five dollars (\$11,055) plus all applicable taxes and reimbursable expenses. Breakdown of phases is as follows:

a. Investigative Study	\$11,055
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b. Construction Documents	Not Included
c. Bidding	Not Included
d. <u>Construction Administration</u>	<u>Not Included</u>
e. TOTAL	\$11,055

Project 4 – New Grizzly Structure near HWY 385 and HWY 85 Intersection

1. A lump sum fee of fifty one thousand nine hundred twenty four (\$51,924) plus all applicable taxes and reimbursable expenses. Breakdown of phases is as follows:

a. Construction Documents	\$37,725
b. Bidding	\$ 3,315
c. <u>Construction Administration</u>	<u>\$10,884</u>
d. TOTAL	\$51,924

Additional Services, if requested, shall be charged at the Structural Engineer of Record's (SER) then current standard hourly rates. 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

1. 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 1.1 times the cost incurred plus any applicable taxes.

ADDITIONAL PROVISIONS

If Basic Services covered by this Agreement have not been completed within 18 months of the date hereof, through no fault of the Structural Engineer(SER), the amounts of compensation



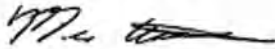
set forth in this Agreement shall be equitably adjusted.

This Agreement, and Exhibits A, B, & C hereto, constitute the entire agreement between the parties. The SER will begin services upon receipt of a signed contract.

This agreement will expire if not signed within 1 month of the agreement date.

AUTHORIZED ACCEPTANCE

by Structural Engineer
of Record (SER)




Signature

Mike Albertson, President
Print Name and Title

May 7, 2020
Date

by Owner


Signature

David B. Roth Jr. Mayor
Print Name and Title

6-1-20
Date



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 5-7-2020 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 include those summarized below. See Exhibit B - Terms and Conditions - for further details.

Basic Services	Included	Not Included	Remarks
PROJECT DEVELOPMENT PHASE	X		
1. Define Scope of Structural Services	X		
2. Assist in Development of Schedule	X		
3. Assist in Determining Channels of Communication	X		
4. Assist in Determining Responsibility for Dimensions	X		
5. Assist in Determining Drawing Standards and Specification Format	X		
6. Assist in Determining Number of Meetings and Number of Site Visits	X		
7. Negotiate Fees and Payment Schedule	X		
8. Execute Contract	X		
9. Provide Investigative Study of Peck's Gulch (Project 3 only)	X		
SCHEMATIC DESIGN PHASE		X	
1. Attend Meetings			

Basic Services (continued)		Included	Not Included	Remarks
2.	Establish Structural Design Criteria		X	
3.	Prepare Studies of Alternative Structural Systems		X	
4.	Assist in Selection of Structural System		X	
5.	Provide Structural Criteria for Geotechnical Consultant		X	
6.	Assist in Determining Need for Special Studies		X	
DESIGN DEVELOPMENT PHASE			X	
1.	Attend Meetings			
2.	Prepare Preliminary Foundation Drawings		X	
3.	Prepare Preliminary Structural Design Calculations for Typical Elements		X	
4.	Prepare Preliminary Framing Layout Drawings		X	
5.	Prepare Typical Detail Sheets		X	
6.	Identify Pre-Engineered Structural Elements		X	
7.	Prepare or Edit Outline Specifications for Structural Items		X	
8.	Assist Preparing Preliminary Opinion of Cost of Construction		X	
9.	Review Results of Special Studies		X	
10	Coordinate Structural Design with Special Design Criteria		X	

Basic Services (continued)	Included	Not Included	Remarks
11. Submit Design Development Documentation for Approval		X	
CONTRACT DOCUMENTS PHASE (Excludes Project 3)	X		
1. Prepare Structural Design of Primary Structural Systems			
2. Designate Elements to be designed by Specialty Engineers, and Specify Structural Criteria for Specialty Engineers Design of Pre-Engineered Structural Elements.		X	N/A for project
3. Review Effect of Secondary or Non-Structural Elements Attached to Primary Structural System		X	
4. Attend Meetings	X		Max. of 3 for Project 1. Max of 2 for Projects 2A, 2B, 3, and 4
5. Assist in Coordination with Building Code Officials	X		
6. Complete Structural Calculations	X		
7. Complete Structural, Civil, and Landscape Architectural Drawings. Complete Geotechnical Exploration.	X		
8. Prepare or Edit Specifications for the Primary Structural System (on drawings). Prepare front end specification including Construction Contracts.	X		
9. Assist in Establishing Testing and Inspection Requirements	X		
10. Perform Checking and Coordination of the Structural Documents	X		
11. Manage sub-consultants as described in Exhibit C.	X		
CONSTRUCTION ADMINISTRATION PHASE			
1. Bidding and Award	X		
a. Assist Evaluating Bidder's Qualifications			
b. Provide Addenda and Clarifications	X		

Basic Services (continued)	Included	Not Included	Remarks
c. Attend Pre-bid Meeting	X		
d. Assist in Bid Evaluation	X		
2. Pre-Construction Services a. Attend Meetings	X		
b. Assist in Establishing Communications Procedures	X		
c. Assist in Establishing Procedures for Testing and Inspections	X		
d. Assist in Confirming Submittal Procedures	X		
e. Assist in Selection of Testing Agency	X		
f. Advise Client and Contractor Which Structural Elements Require Construction Observation by SER	X		
g. Respond to Building Department and Peer Reviewer Comments	X		
3. Submittal Review a. Review Specified Submittals for Items Designed by SER b. Review Submittals for Pre-Engineered Structural Elements c. Process submittals prepared by Albertson Engineering sub-consultants	X		
4. Site Visits a. Make Site Visits at Intervals Appropriate to the Stage of Construction b. Prepare Site Visit Reports c. Attend construction progress meetings (bi-weekly)	X		
5. Materials Testing and Inspection a. Review Testing and Inspection Reports, and initiate appropriate action to those reports, if needed	X		

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 9-7-11 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.
- 1.1.3 If a Prime Design Professional (as defined below) is also engaged by the Owner to participate in this project, then that Prime Design Professional shall be responsible for determining and interpreting the needs of the Owner, and for coordinating the work of the SER and other members of the design team.

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.



Albertson Engineering Inc.

- 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 schematic design phase, design development phase, and contract documents phase. These approvals shall include an authorization to proceed to the next 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.
- 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 SER shall submit, or coordinate with the Prime Design Professional to submit, to the Owner a timely schedule for the performance of the SER's services, to the degree possible consistent with the SER's requirements for skill and care as well as the Owner's desired goals and commitments.
- 1.2.7 The Owner shall provide to the SER reports of geotechnical investigations, property surveys, and other reports and data requested, as well as any previous reports or other data relative to the Project.
- 1.2.8 The Owner shall coordinate, or arrange for coordination through the Prime Design Professional, the services of the design team to minimize conflicts or misunderstandings.

1.3 Definitions

- 1.3.1 Prime Design Professional is the leader of the design team charged with the design of a new or remodeled facility, either an architect or an engineer. The Prime Design Professional is responsible for determining and interpreting the

needs of the Client and for coordinating the work of the other members of the design team.

- 1.3.2 Primary Structural System is the completed combination of elements, which serve to support the Building's 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. Curtain wall members, non-loadbearing walls or exterior facade are examples of items, which are not part of the Primary Structural System.

- 1.3.3 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.

- 1.3.4 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.

- 1.3.5 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. Examples may include but not be limited to: support beams above the primary roof structure which carry a chiller, elevator support rails and beams, retaining walls independent of the primary building, and flagpole or light pole foundations.

- 1.3.6 Non-Structural Elements are elements of a structure that are not primary or secondary structural elements. Items in this category could be exterior curtain walls and cladding, non-bearing partitions, stair railings, etc.

- 1.3.7 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.

- 1.3.8 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.

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 and Non-Structural 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. Where Exhibit A-Summary of Services includes secondary and non-structural elements to be reviewed by the SER, the SER shall be entitled to rely on the accuracy and completeness of information furnished by the Owner and Prime Design Professional.

- 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.

Prepare construction observation reports.

Section 3 - Additional Services

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) Services related to Non-Structural Elements and their attachments, such as:
 - a. Exterior cladding systems.
 - b. Interior architectural systems.
 - c. Window washing systems and tie downs.
 - d. Antennas and flagpoles.
 - e. Mechanical, electrical and plumbing equipment, storage tanks, cooling towers and underground vaults.
 - f. Mechanisms and guide systems for elevators, escalators, other conveyor systems and associated operating equipment.
 - g. Ladders, handrails, railings, grills, screens and signs.
- 2) Services related to Secondary Structural Elements and their attachments, such as:
 - a. Site-work elements not part of the Building Structural System, such as retaining walls, culverts, bridges, etc; as well as support for landscape furnishing such as flagpoles, lighting poles, benches, fountains, pools, signs, etc.
 - b. Stairs.
- 3) Tenant-related design services.
- 4) 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.

- 5) Services related to special wind analyses, such as wind-tunnel tests, etc.
- 6) Services related to "seismic risk" analysis.
- 7) Preparation of demolition documents.
- 8) Field Investigation of existing buildings and structures including surveys of existing construction.
- 9) Studies of various schemes to accommodate special energy requirements.
- 10) Services connected with the preparation of documents for alternate bids or for segregated contracts for phased or fast track construction.
- 11) Continuous and/or detailed inspections of construction.
- 12) Design or field observations of shoring and bracing for excavations and buildings, or underpinning of adjacent structures.
- 13) Design or review related to contractor's construction related equipment, e.g., cranes, hoists, etc.
- 14) Design of swimming pools.
- 15) Design for future expansion.
- 16) Filing application for and obtaining a building permit.
- 17) Preparation of "as-built" or record set of drawings.
- 18) Preparation of shop or fabrication drawings, for example, tilt-up wall panel drawings, reinforcing and structural steel detailing, etc.
- 19) Review and determination of structural fire resistance requirements.
- 20) 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.

5.2 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.
- 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, subject to the provisions in the paragraph below on Risk Allocation.
- 5.2.3 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 from the presence, discharge, release or escape of asbestos, hazardous waste, or other contaminants at the site.

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.

- 6.4.4 The SER and Owner agree that the services performed by the SER pursuant to this Agreement are solely for the benefit of the Owner and are not intended by either the SER or the Owner to benefit any other person or entity. To the extent that any other person or entity, including but not limited to the Owner and/or any of its Subcontractors and other Design Professionals, is benefited by the services performed by the SER pursuant to this Agreement, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to this contract.

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).



Albertson Engineering Inc.

October 6, 2020

Addendum No. 1 to:

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

between: Albertson Engineering Inc. and City of Deadwood, dated May 7, 2020.

for: Whitewood Creek Restoration (AEI project# 2020-096)

MODIFICATIONS:

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Project 3 Subsection shall be changed to the following:

Project 3 – Creek Restoration by Comfort Inn & Suites

a) Investigative Study	\$11,055
b) Geotechnical & Survey	\$15,600
c) Construction Documents	\$61,500
d) Bidding	\$7,700
e) <u>Construction Administration</u>	<u>\$24,100</u>
TOTAL	\$119,955

[end of contract modifications]

Albertson Engineering Inc.
Albertson Engineering Inc.
Rapid City
3202 West Main, Suite C
Rapid City, SD 57702
605-343-9606

Sioux Falls
315 North Main Avenue, Suite 207
Sioux Falls, SD 57104
605-274-0880

Winner
202 South Main
Winner, SD 57580
605-842-1144

Please note that the total net fee increase to the project is \$108,900 which matches the dollar amount in the latest Proposal (Attachment #2). The Project 3 Investigative Study phase of \$11,055 was already included in the original contract.


Sincerely,

Albertson Engineering Inc.



Mike Albertson, President

Approved by:


Signature

David B Ruth Jr Mayor
Name, Title

10/19/20
Date

ATTACHMENTS

1. An Agreement Between Owner and Structural Engineer of Record for Professional Services (Whitewood Creek Restoration dated May 7, 2020)
2. Proposal for Professional Design Services for Whitewood Creek Restoration – Site 3 (September 17, 2020)



Albertson Engineering Inc.