

March 22, 2022

Joe Schroeder, PE
City Engineer
City of Mitchell
612 North Main Street
Mitchell, SD 57301



RE: City of Mitchell
9th & 5th Reconstruction Project
Construction Services

Dear Mr. Schroeder:

Thank you for the opportunity to provide construction services to the City of Mitchell for the 9th & 5th Reconstruction Project. As requested, McLaury Engineering has prepared a proposal for construction staking services and engineering support services during construction.

McLaury Engineering has a long history of survey and construction engineering experience. We look forward to working with you on this project. Please feel free to call me at 605-928-7676 if you have any questions.

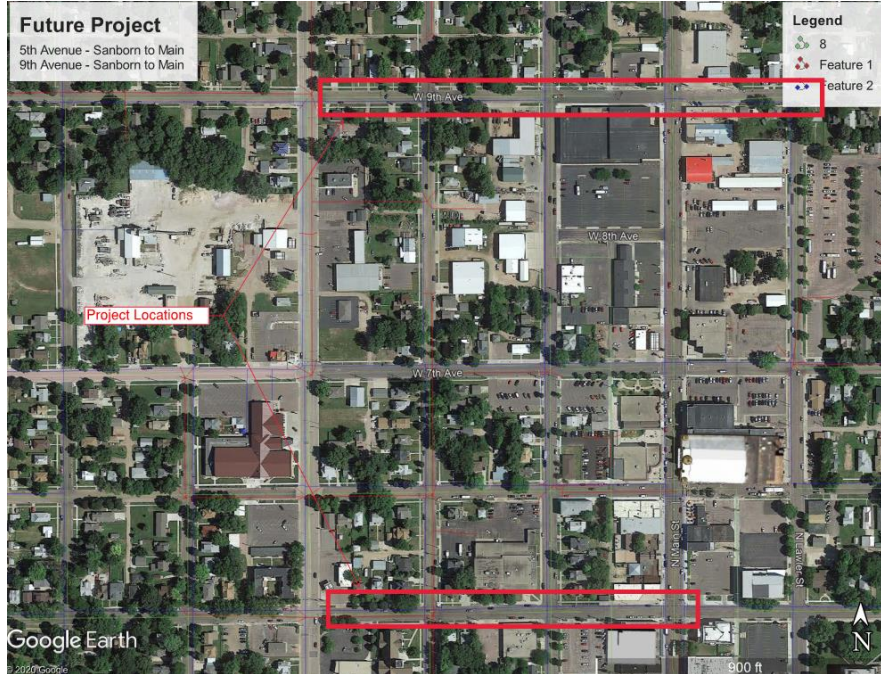
Sincerely,
McLaury Engineering, Inc.

Ryan J Murtha, PE
Project Engineer

ATTACHMENT A

Project Understanding

The City of Mitchell recently bid the 9th & 5th Street project for construction during the 2022 construction season. The project consists of a complete street and utility reconstruction of 9th Avenue from Sanborn Blvd to Lawler Street and 5th Avenue from Sanborn Blvd to Main Street. Street reconstruction will consist of complete removal and replacement of the existing roadway surface, sidewalks, driveway approaches, and all necessary tie-ins. Utility reconstruction will consist of complete replacement of the sanitary sewer, water main, and storm sewer.



The City of Mitchell is to provide the staking for this project. As described in the general notes of the project plans, staking is to consist of the following:

CONSTRUCTION STAKES AND BENCHMARKS

Reference points, lines, grade stakes, and benchmarks set by the Engineer in connection with the work will be carefully preserved by the Contractor and will not be disturbed or moved from the exact position and elevation as set by the Engineer.

No excavated material will be placed over or against said stakes and, except where necessary to remove the stakes as the work progresses, stakes will be carefully preserved in the original position and elevation until the work has been accepted. Stakes which must be removed as the work progresses will be removed only upon concurrence by the Engineer.

Staking required to complete the work will be completed by the Engineer unless otherwise noted. Staking will be completed one time for each work item. Stakes disturbed or removed through the carelessness of the Contractor will be restaked by the Engineer and may result in a price adjustment to the contract.

The provided staking on this project includes 1 set of stakes for each of the following:

- 1) Control Points*
- 2) Storm Sewer Pipe and Structures*
- 3) Sanitary Sewer Pipe and Structures*
- 4) Water Main*
- 5) Subgrade*
- 6) Back of Curb and Centerline to Finish Grade*

The Contractor will give 48-hour notification for staking.

Staking has been planned for the items above assuming four construction phases for each staking item in accordance with the plans. Restaking, due to Contractor negligence is not included in the proposed cost.

Engineering support will consist of attendance at preconstruction meeting, preparation of machine control/grading files, and correspondence for project related design questions.

Project Team

Ryan Murtha, PE will serve as the Project Manager for McLaury Engineering and will handle engineering support. The survey staking team will be led by Chris Groen, PLS.

Scope of Services

Task 1: Engineering Support related tasks will include:

- Attending Preconstruction meeting
- Preparation of machine control/grading files
- Correspondence for project related design questions including phone calls, emails, and /or any version of communication deemed necessary during the course of the project. Estimated at 3 hours per week and 25 weeks of construction.

Task 2: Staking related tasks will include:

- Creation of staking files from project plans
- Setting site control points including benchmarks for construction inspection and points for machine grading control calibration.
- Four phases of staking for each of the following items:
 - Storm sewer pipe and structures
 - Sanitary sewer pipe and structures
 - Water main pipe
 - Subgrade centerline staking
 - Back of curb stakes with cut/fill to centerline finished grade
- Basecourse Blue-top staking

Schedule

Construction is anticipated to be completed between April 2022 and November 2022. Engineering support and staking are anticipated to occur over that same period.

Additional Services

The following items are not included in the scope of services, but can be completed if authorized under a supplemental agreement:

- Construction Inspection
- Asbuilt survey work
- Resetting of disturbed property corners

Fee

McLaury Engineering proposes to be compensated for the scope of services outlined in the Agreement on an hourly basis. McLaury Engineering will provide the scope of services for a total fee not to exceed **\$43,000**. If the need for additional services arises due to changes in project scope, schedule, or other unforeseen circumstances, the additional services will be negotiated with the City of Mitchell.

Item	Estimated Total Task Fee
Task 1 – Engineering Support	\$17,300
Task 2 – Staking	\$25,700
Total – Not-To-Exceed	\$43,000

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of _____, **2022** ("Effective Date") between

City of Mitchell ("Owner") and **McLaury Engineering, Inc.** ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

9th & 5th Reconstruction – Construction Services ("Project").

Engineer's Services under this Agreement are generally identified as follows:

See Attachment A

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: **As needed during construction**

2.01 *Payment Procedures*

- 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. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then 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. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

- 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven 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 of notice; 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 shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. 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 4.01.B 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.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted 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.
- C. 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 contractor, subcontractor, supplier, other 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.

5.01 *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 Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants 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 contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer. Engineer's duty to perform services according to the standard of care shall not be limited, altered, or removed by any other provision of this agreement.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All raw data, studies, reports, and other work products of Engineer for this project ("Project Documents") are instruments of service for the project only and shall be deemed the joint property of Engineer and Owner whether the project is completed or not. The Owner may make and retain copies of the Project Documents which may be used by the Owner and others. Both Engineer and Owner may use the Project Documents for their own purposes outside of the project when appropriate. However, the Project Documents are not intended or represented to be suitable for reuse by the Owner or others on extensions of the project or on any other project. Any such use without written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer and the Owner shall indemnify and hold harmless the Engineer and their consultants and each of their officers, agents, and employees from any and all liability claims, losses, damage and expenses, including attorney's fees, arising out of or resulting from the negligent use or intentional misuse of the Project Documents by Owner.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, 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 the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, 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 Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- 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 shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *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.

7.01 *Basis of Payment—Hourly Not-to-Exceed Maximum Fee Amount*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
 2. Engineer's Standard Hourly Rates are attached as Appendix 1. Adjustments to rates can be made for work which extends multiple years.
 3. The total compensation for services and reimbursable expenses is estimated to be **\$43,000**.
- 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.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

Attachments: Appendix 1, Engineer's Standard Hourly Rates

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: **City of Mitchell**

By: _____

Print Name: _____

Title: _____

Date Signed: _____

Address for giving notices:

612 N. Main Street

Mitchell, SD 57301

ENGINEER: **McLaury Engineering, Inc.**

By:  _____

Print Name: **Ryan Murtha**

Title: **Project Engineer**

Date Signed: **March 22, 2022**

Engineer License or Firm's Certificate
Number: SD-12063

State of: South Dakota

Address for giving notices:
P.O. Box 916

110 N. First St.

Parkston, SD 57366

(605) 928-7676
