



STOCKWELL ENGINEERS, INC.

## AGREEMENT FOR PROFESSIONAL SERVICES

**Project:** 2018 Street Repairs

**Stockwell Project No.:** 17249

This Agreement for Professional Services (hereinafter "Agreement") is made and entered into this 20<sup>th</sup> day of October, 2017, by and between **STOCKWELL ENGINEERS, INC.**, 801 North Phillips Avenue, Suite 100, Sioux Falls, SD 57104, (hereinafter "Engineer") and **CITY OF HARRISBURG**, (hereinafter "Client"), for the services described under the Scope of Services (the "Services").

**CLIENT:** City of Harrisburg

**Address:** P.O. Box 26 • Harrisburg, SD 57032

**Phone No.** (605) 743-5872

**Fax No.** (605) 743-2831

**Scope of Services:** Client hereby agrees to retain Engineer to perform the Services as outlined in the attached *Proposal for Professional Services* dated October 20, 2017. In general, the Project consists of conducting a topographic survey, the design and preparation of civil engineering plans and specifications, assisting in the bidding process and providing construction administration and staking for street repairs on Walnut Street, Elm Street and Ivy Lane (the "Project").

**Compensation:** In consideration of these Services, the Client agrees to pay Engineer compensation as follows:

**Basic Compensation:** \$52,533.00 excluding sales tax

**Additional Services Multiplier:** 1.0 times the expense incurred by the Engineer

**Reimbursable Expense Multiplier:** 1.0 times the expense incurred by the Engineer

The attached Proposal for Professional Services, Schedule of Billing Rates and Standard Terms and Conditions are made a part hereof and incorporated into this Agreement.

IN WITNESS WHEREOF, this Agreement is accepted on the date last written below, subject to the terms and conditions above stated and the provisions set forth herein.

**CLIENT**

**STOCKWELL ENGINEERS, INC.**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name (printed): \_\_\_\_\_

Name (printed): Jon Brown, P.E.

Title: \_\_\_\_\_

Title: President

Date: \_\_\_\_\_

Date: \_\_\_\_\_



17249 | SEI No.  
Survey Limits exhibit | Encl  
Mary McClung | cc

October 20, 2017

Mr. Andrew Pietrus  
City of Harrisburg  
P.O. Box 26  
Harrisburg, SD 57032

**BY EMAIL ONLY**  
[Andrew.Pietrus@harrisburgsd.gov](mailto:Andrew.Pietrus@harrisburgsd.gov)

Re: Proposal for Professional Services  
2018 Street Repairs

Stockwell Engineers, Inc. (Stockwell) proposes to provide professional services for 2018 Street Repairs (the "Project"). Stockwell's services will be provided in the manner described in this Proposal subject to the terms and conditions set forth in the attached "Standard Terms and Conditions". **City of Harrisburg** is referred to as the "Client."

### 1.0 Project Description

- 1.1 In general, the Project consists of conducting a topographic survey, the design and preparation of civil engineering plans and specifications, assisting in the bidding process and providing construction administration and staking for street repairs on Walnut Street, Elm Street and Ivy Lane (the "Project").

### 2.0 Project Management

- 2.1 Attend initial meeting with Client to determine Project concept and scope.
  - 2.1.1 Walnut Street from Grand Avenue to Perry Lane and Elm Street from Grand Avenue to Elm Street cul-de-sac.
    - 2.1.1.1 Curb & gutter replacement.
    - 2.1.1.2 Asphalt patching.
    - 2.1.1.3 Asphalt overlay with rotomilling at edges.
  - 2.1.2 Ivy Lane from Perry Lane to Willow Street.
    - 2.1.2.1 Water main replacement.
    - 2.1.2.2 Asphalt repair resulting from water main replacement.
- 2.2 Review all background information made available to Stockwell by Client.
- 2.3 Provide internal Project management and quality control.
- 2.4 Coordinate with Client's geotechnical consultant. Client to provide geotechnical report. Stockwell is not responsible for any impact on Client's Project caused by subsurface conditions. Stockwell is entitled to rely on the accuracy of information and services furnished by client and its geotechnical firm. Geotechnical services will be hired directly by Client at Client's cost.
- 2.5 Perform site visits as needed to verify accuracy of final deliverables.

### 3.0 Topographic Survey

- 3.1 Notify affected property owners of pending survey.
- 3.2 Research and verify existing easements and plats of record at county courthouse for the property.
- 3.3 Locate existing boundary markers at the time of the survey.

- 3.4 Locate all existing above ground features within the established survey limits. Take a sufficient frequency of elevation shots to establish reasonable accuracy for contours to be shown on a one foot interval. Provide building floor elevations available at the time of survey through existing exterior doorways made available by Client and/or Owner, as necessary.
- 3.5 Show utilities, above and below ground, located in the field at the time of the survey by the utility companies, Client or other authorized agents of utility companies. Stockwell will contact South Dakota One Call System, if available, to arrange for the location of utilities at the time of survey.
- 3.6 Prepare topographic survey utilizing AutoCAD Civil 3D for use in development of plan documents.

#### 4.0 Final Design

- 4.1 Determine removal limits for the Project site.
- 4.2 Layout and design improvements based on parameters established by Client.
  - 4.2.1 Design water main system utilizing industry accepted standards complying with Client's minimum design standards. Determine pipe size based on industry minimum design standards, unless Client requires other design standards.
  - 4.2.2 Design curb and gutter elevations to match existing conditions.
- 4.3 Prepare review plan submittal documents utilizing latest Client drafting standards to include:
  - 4.3.1 Title page.
  - 4.3.2 Legend, plan orientation and Project control data, as necessary.
  - 4.3.3 Quantities for a unit price construction contract.
  - 4.3.4 Typical sections.
  - 4.3.5 General notes including Project drawing specific issues.
  - 4.3.6 Conceptual traffic control plan showing all streets and alleys impacted by construction of the Project. All road and lane closures will be indicated on the plan. Traffic control plans will indicate suggested sequencing of the Project construction plan and general guidelines for phasing construction of the Project.
  - 4.3.7 Erosion control plan and narrative illustrating erosion control measures meeting governmental agencies' standards. If the Project disturbs an area in excess of one (1) acre a Storm Water Pollution Prevention Plan will be prepared.
  - 4.3.8 Plan and profile sheets showing existing utilities and street geometrics and illustrating removal and replacement limits. Plan notes will include horizontal location as well as appropriate quantities.
  - 4.3.9 Plan and profile sheets showing existing and new water main pipes, appurtenances and services. Plan notes will include horizontal and vertical location of all significant points, as well as appropriate quantities.
  - 4.3.10 Standard plates and special details, as determined by Stockwell.
- 4.4 Provide detailed specifications supplementing Client's standard specifications, as necessary. Materials types and materials specific items will be included as detailed specifications.
- 4.5 If applicable, prepare Notice of Intent (NOI) and deliver to Client to execute. Client to submit NOI to permit authority.
- 4.6 Prepare and submit to Client for approval final "Engineer's Estimate" of estimated construction costs for the Project and submit to Client for approval.
- 4.7 Submit to Client for review and approval three copies of the review plans and specifications including Engineer's Estimate. An electronic copy of the plans and specifications will be provided, if requested.

- 4.8 Address Client's comments to review plans and specifications submittal. Update Engineer's Estimate, as necessary, to complete final plan and specifications.
- 4.9 Provide to Client for review and approval three copies of final plans and specifications including Engineer's Estimate. An electronic copy of the plans and specifications will be provided, if requested.

*Deliverables: Public meeting minutes; NOI; estimate of construction costs; review plan submittal documents; and final plan submittal documents.*

## **5.0 Bidding**

- 5.1 Provide bidding documents to prospective bidders.
- 5.2 Maintain a list of plan holders.
- 5.3 Answer any questions arising throughout the bidding process and prepare addendums as required.
- 5.4 Prepare bid tab of potential bidders and attend the bid opening.
- 5.5 Attend governing council, board or commission meeting, if requested.
- 5.6 Prepare an itemized bid tab. Post on Stockwell's website for informational purposes.
- 5.7 Prepare and deliver to Client an award recommendation letter based on the bids received.
- 5.8 Prepare and submit to contractor Notice of Award letter.

*Deliverables: Addendums; itemized bid tab; award recommendation letter; and Notice of Award letter.*

## **6.0 Construction Administration**

- 6.1 Prepare construction agreement and submit to Contractor for signature.
- 6.2 Review construction agreement and accompaniments provided by the Contractor. Client's legal staff to review Contractor's bonds and insurance for authenticity.
- 6.3 Prepare and distribute to contractor Notice to Proceed.
- 6.4 Assist Client in procuring material testing services. Material testing agent will be hired directly by Client. Client is responsible for paying the cost of material testing. Stockwell is not responsible for any impact on Client's Project caused by failing tests. Stockwell is entitled to rely on the accuracy of the information and services furnished by Client and its testing firm.
- 6.5 Schedule and conduct preconstruction meeting. Stockwell to notify contractor and private utilities of the meeting time and location, prepare an agenda, and distribute minutes to attendees.
- 6.6 Review and approve or not approve submitted shop drawings, product submittals, test results and other submittals. Require submittals to be revised, if necessary.
- 6.7 Assist Client in notifying affected property owners.
- 6.8 Provide Client a video/pictures of pre-existing conditions of significant items, if requested.
- 6.9 Mark removal limits of appropriate items.
- 6.10 Observe construction activities when significant work is done to determine generally if the contractor is proceeding in accordance with the contract documents. On the basis of site visit, Stockwell will keep Client reasonably informed about the progress and quality of the work completed, and report to Client known deviations from the contract documents and from the most recent construction schedule, and defects and deficiencies observed in the work.
- 6.11 Maintain reports indicating weather conditions, construction progress, deviations from the plans and specifications, work performed, quantities installed and other pertinent information. Develop biweekly progress reports based on reported information and provide to Client and contractor for their information.
- 6.12 Prepare and provide to Client biweekly construction bulletins.

- 6.13 Conduct, as necessary, progress and coordination meetings. Record and distribute minutes to all attendees.
- 6.14 Prepare change orders and progress payment request forms, as needed, and submit to contractor and Client for execution.
- 6.15 Maintain and update the Storm Water Pollution Prevention Plan (SWPPP), as required. Record minor and major changes utilizing a modification form. Prepare illustrations of modifications, if applicable.
- 6.16 Conduct a final inspection when the Project is complete. Record, generate and provide to Client and contractor a "punch list" of construction items requiring completion or correction.
- 6.17 Prepare and submit to Client, if required, letter of certification of Project completion confirming compliance of construction with the contract documents and start of warranty period.
- 6.18 Prepare, deliver to Client and contractor and obtain signatures on final change order to reflect as-built quantities.
- 6.19 Prepare and deliver to Client and contractor and obtain signatures on final pay request form.
- 6.20 Submit to governmental agencies, if necessary, Notice of Termination (NOT).
- 6.21 Prepare as-built drawings based on improvements surveyed in the field. Submit within 30 days of substantial completion DWG and PDF type files. A hard copy of the full Project will be provided if requested. The design text will be updated if the horizontal locations vary more than 5 feet and/or the vertical locations more than 0.1 foot. Improvements to be updated on the as-built drawings will be as follows.
  - 6.21.1 Water main plan & profile.
- 6.22 Schedule and conduct applicable warranty inspections.

*Deliverables: Contract; Notice to Proceed; preconstruction meeting minutes; video of pre-existing conditions; reports; progress/coordination meeting minutes; change orders/pay requests; SWPPP inspection report; final inspection "punch list"; certification of project completion letter; final change order/pay request; NOT; and as-built drawings.*

## **7.0 Construction Staking**

- 7.1 Mark proposed improvements and elevations as shown on the plans.
- 7.2 Reset all boundary markers removed during construction.

*Deliverables: None*

## **8.0 Additional Services**

- 8.1 A non-comprehensive outline of additional services and exclusions from Stockwell's proposal are listed below. If authorized in writing by Client, Stockwell will furnish additional services over and above the amount set forth by this agreement. Compensation for additional services will be at Stockwell's current hourly rates or otherwise as mutually agreed upon by both parties.
  - 8.1.1 Geotechnical or other exploratory and testing services.
  - 8.1.2 Title search on properties.
  - 8.1.3 Coordination of warranty repairs.

## **9.0 Compensation**

- 9.1 Compensation for services provided by Stockwell pursuant to this Proposal will be as outlined below excluding sales or excise tax (based on estimated construction costs of \$262,665). Stockwell's current Hourly Rate Schedule is attached. Client must make payments in accordance with Item B of the Standard Terms and Conditions attached to this Proposal.
  - 9.1.1 Task 2 thru 5 (lump sum) \$24,233.00

9.1.2	Task 6 and 7 (hourly not to exceed)	\$28,300.00
9.1.3	<b>Total</b>	<b>\$52,533.00</b>
9.2	The level of effort required of Stockwell to accomplish the services described in this Proposal may be affected by factors beyond Stockwell's control. Therefore, if it appears at any time compensation for services rendered will exceed the maximum compensation amount, Stockwell and Client agree Stockwell will not perform additional services or be entitled to additional compensation in excess of the maximum compensation amount until Stockwell and Client have agreed upon additional compensation for services to be rendered and Client has available funds to pay for Stockwell's services.	

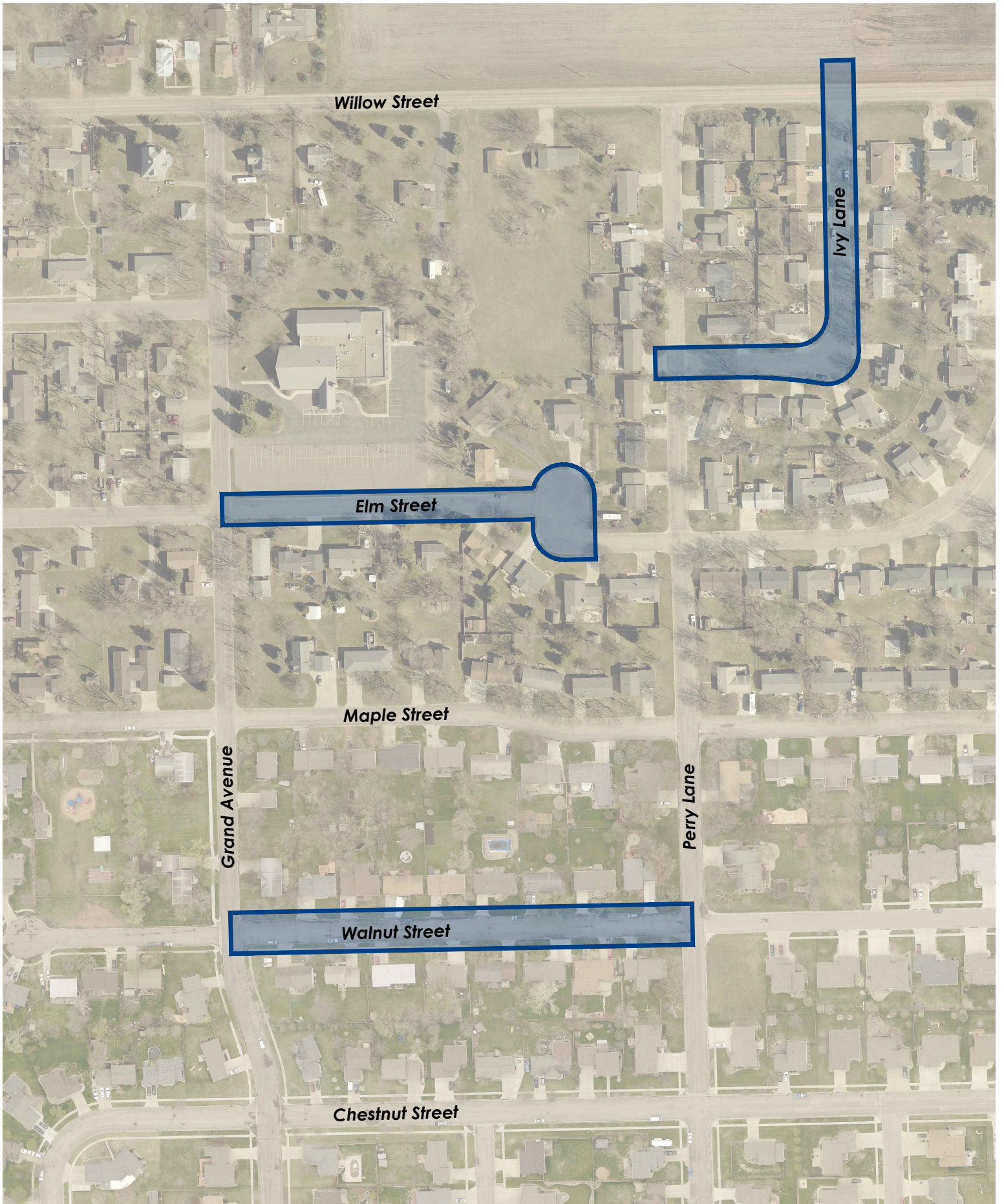
Sincerely,

STOCKWELL ENGINEERS, INC.



Jon Brown, P.E.  
President





*Willow Street*

*Ivy Lane*

*Elm Street*

*Maple Street*

*Grand Avenue*

*Perry Lane*

*Walnut Street*

*Chestnut Street*

# Survey Limits 2018 Street Repairs



Scale: 1" = 200'



10/20/2017 Stockwell No: 17249





## STANDARD TERMS AND CONDITIONS

### A. Commencement of Services.

The Services will be commenced immediately upon receipt of the signed Proposal (the "Agreement"). If after commencement of the Services, the Project is delayed for any reason beyond Stockwell's control for more than 60 days, the terms and conditions contained herein will be subject to revision by Stockwell. Subsequent modifications to this Agreement must be in writing and signed by the parties to the Agreement.

### B. Fees and Payment.

**1.0 Invoices.** Compensation for Services will be as designated in this Agreement. Services based on Stockwell's standard hourly rates will be those rates currently in effect at the time the Services are rendered. Hourly rates are subject to change upon 30 days' written notice, including during the term of this Agreement. Client must reimburse Stockwell for out-of-pocket expenses directly attributable to the Project, such as: (1) living and traveling expenses of Stockwell's employees when away from the home office on business connected with the Project; (2) phone and fax expenses; (3) copy costs applicable to the Services; and (4) additional contracted third-party services to be charged in accordance with the rates in effect at the time the services are rendered.

**2.0 Payment Due.** Stockwell will deliver to Client invoices monthly. Payment will be due within 30 days after the date of the invoice describing the Services performed and expenses incurred during the preceding month.

**3.0 Failure to Pay.** Client agrees timely payment is a material term of this Agreement and failure to make timely payment as agreed will constitute a breach hereof. In the event payment for Services rendered has not been made within 30 days from the date of the invoice, Stockwell may, after to Client giving 7 days' written notice, and without penalty or liability of any nature, and without waiving any claim against Client, suspend all Services to be performed. Upon receipt of payment in full for Services rendered, plus interest charges, Stockwell will continue with the Services, but all deadlines for Stockwell's performance of services will be extended for a period of time equal to the delay in Stockwell's receipt of payment. Payment of all compensation due Stockwell pursuant to this Agreement will be a condition precedent to Client using any of Stockwell's Services' work product under this Agreement.

**4.0 Interest on Late Payments.** In order to defray carrying charges resulting from delayed payments, interest at the rate of 1.5% per month will be added to the unpaid balance of each invoice. The interest period will commence 45 days after the date of the original invoice and will terminate upon date of payment. Payments will be first credited to interest and then to principal.

### C. Owner's Responsibilities.

**1.0 Client to Provide Information.** Unless otherwise provided for under this Agreement, Client will provide information in a timely manner regarding requirements for and limitations on the Project, including Client's Program objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from Stockwell, Client must furnish the requested information as necessary and relevant for Stockwell to evaluate, give notice of or enforce lien rights.

**2.0 Client to Provide Contractors.** Client will furnish the services of a contractor who along with Client will be responsible for creating the overall Project Schedule. Client will adjust the Project Schedule, if necessary, as the Project proceeds.

**3.0 Client to Provide Representative.** Client will identify a representative authorized to act on Client's behalf with respect to the Project. Client will render decisions and approve Stockwell's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Stockwell's Services.

**4.0 Client to Provide Notice.** Client will provide to Stockwell prompt written notice if Client becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in Stockwell's instruments of service.

### D. Miscellaneous Provisions.

#### 1.0 Insurance/Indemnification/Risk Allocation

**1.1 Insurance/Limitation of Stockwell's Liability.** Stockwell will maintain the following insurance coverages.

- (a) Worker's compensation insurance pursuant to state law.
- (b) Business automobile insurance covering claims for injuries to members of the public and/or damages to property of

others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with a combined single limit of \$1,000,000.

- (c) Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of Stockwell with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- (d) Professional liability insurance of \$1,000,000 per occurrence and in the aggregate.

**1.2 Professional Liability.** To the fullest extent permitted by law, Stockwell will be liable to and must defend, indemnify and hold harmless Client and its, agents, officers, directors, employees, subcontractors and consultants from and against claims, losses, damages, expenses, penalties, costs, and other liabilities, including reasonable attorneys' fees and court costs, arising out of or resulting from the negligent performance of the professional services rendered by Stockwell or any of its consultants pursuant to this Agreement or as a result of a breach of this Agreement.

**1.3 Hazardous Materials - Indemnification by Client.** Client understands and agrees Stockwell has not created nor contributed to the creation or existence of any types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at Client's premises, or in connection with or related to the Project with respect to which Stockwell has been retained to provide Services. The compensation to be paid Stockwell for Services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, Client agrees to defend, indemnify and hold harmless Stockwell, its agents, officers, directors, employees, contractors and consultants, from and against any and all claims, damages, and expenses, whether direct, indirect, consequential or otherwise, including, but not limited to, attorneys' fees and court costs, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkaline, toxic chemicals, liquid gases, or other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto upon, in or into the surface or subsurface or soil, water, or water courses, objects, or any tangible or intangible matter, whether sudden or not.

**1.4 No Governmental Action Liability.** Stockwell will not be liable for damages arising out of or resulting from the actions or inaction of government agencies, including, but not limited to, permit processing, environmental impact reports, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits. Client agrees to defend, indemnify and hold harmless Stockwell, its agents, officers, directors, employees, contractors, and consultants from any and all such liabilities (including reasonable attorneys' fees and court costs), other than that caused by the negligent acts, errors or omissions of Stockwell, arising out of or resulting from the same.

**1.5 No Project Liability.** Notwithstanding any provisions in this Agreement to the contrary, if the Project involves construction, as that term is generally understood, and Stockwell does not provide Services during construction, including, but not limited to, observation, site visits, shop drawing review, and design clarifications, Client agrees to defend, indemnify and hold harmless Stockwell, its agents, officers, directors, employees, contractors and consultants from any and all liability (including reasonable attorneys' fees and court costs) arising out of the Project or this Agreement.

### 2.0 Documents.

**2.1 Ownership of Work Product and Proprietary Information.** The written plans and specifications prepared under this Agreement will become the property of Client only upon completion of the Services and payment in full of all monies due Stockwell. Client may not reuse or make any modifications to the plans and specifications without Stockwell's prior written authorization. Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless Stockwell, its agents, officers, directors, employees, contractors and consultants from any claim, liability or cost (including reasonable attorneys' fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modifications of Stockwell's work product by Client or any person that acquires or obtains the plans and specifications from or through Client without Stockwell's written authorization.

Notwithstanding the foregoing, all computer programs, work product, inventions, patents, copyrights, software, and other like data developed during the course of the Project, are and will remain Stockwell's sole property. Stockwell's liability to Client for any errors or omissions of



computer programs, software products, or related data furnished hereunder is limited solely to the correction of residual errors, minor maintenance, or updates as needed. STOCKWELL MAKES NO WARRANTIES OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT, WITH RESPECT TO COMPUTER PROGRAMS, SOFTWARE PRODUCTS, RELATED DATA, TECHNICAL INFORMATION, OR TECHNICAL ASSISTANCE PROVIDED BY STOCKWELL UNDER THIS AGREEMENT.

**2.2 Environmental.** Environmental Audit/Site Assessment reports are prepared for Client's use only. Client agrees to defend, indemnify, and hold harmless Stockwell, its agents, officers, directors, employees, contractors and consultants against all damages, claims, expenses, and losses (including reasonable attorneys' fees and court costs) arising out of or resulting from any reuse of the Environmental Audit/Site Assessment reports without Stockwell's written authorization.

Nothing contained in this Agreement may be construed or interpreted as requiring Stockwell to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A., §6901 et seq., as amended, or within any state statute governing the generation, treatment, storage, and disposal of waste.

- 3.0 Injury to Workers on Project.** Client agrees Stockwell will be named an Additional Insured on construction contractors' insurance policy for commercial general liability insurance, and Client agrees to insert into all contracts for construction between Client and construction contractors a provision requiring the construction contractors to defend, indemnify and hold harmless both Client and Stockwell from any and all actions arising out of the construction Project, including, but not limited to, injury to or death of any worker on the job site, not caused by the sole negligence of Client or Stockwell.
- 4.0 Probable Construction Cost Opinions.** Any opinion of probable construction costs for the Project considered and designed under this Agreement will be prepared by Stockwell through the exercise of its experience and judgment in applying presently available cost data, but it is recognized Stockwell has no control over the cost of labor and materials, the construction contractors' methods of determining prices, competitive bidding procedures, market conditions, and unknown field conditions. Stockwell cannot and does not guarantee proposals, bids, or the Project construction costs will not vary from Stockwell's opinion of probable construction costs.
- 5.0 Site Visits.** Visits to the construction site and observations made by Stockwell as part of the Services during construction under this Agreement will not make Stockwell responsible for, nor relieve the construction contractors of the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the contract documents, will not make Stockwell responsible for, nor relieve the construction contractors of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing portions of the work under the construction contracts, and will not relieve the construction contractors of the obligation to provide all safety precautions incidental thereto. Such visits by Stockwell are not to be construed as part of Stockwell's observation duties of the Project site.
- 6.0 On-Site Observation.** When Stockwell provides on-site observation personnel as part of the Services during construction, the on-site observation personnel will make reasonable efforts to advise Client of observed defects and deficiencies in the contractors' work, and to help determine if the provisions of the Contract Documents are being fulfilled. Their day-to-day observation will not, however, cause Stockwell to be responsible for those duties and responsibilities which belong to the construction contractors, including, but not limited to, full responsibility for the means, methods, techniques, sequences, and progress of construction, and the safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents.
- 7.0 Right of Entry.** Client must provide for entry to the Project site for Stockwell's agents, employees, contractors and consultants and for all necessary equipment.
- 8.0 Termination or Abandonment.** If any portion of the Services or Project is terminated or abandoned by Client, the provisions of this Section 8.0 in regard to compensation and payment will apply insofar as possible to that portion of the Services not terminated or abandoned. If termination occurs prior to completion of any phase of the Project, the fee for Services performed during the phase will be based on Stockwell's reasonable estimate of the portion of the phase completed prior to termination, plus a reasonable amount to reimburse Stockwell for termination costs.
- 9.0 Default and Remedies.**
  - 9.1 Client's Default.** If Client breaches any of the terms of this Agreement, Stockwell, in addition to other rights set forth in Section 1.3 above, will give Client written notice of default setting forth the default. If Client has not remedied the default within 7 days of the date of default, Stockwell may

terminate this Agreement and proceed with any or all remedies provided under applicable law.

- 9.2 Stockwell's Default.** If Stockwell breaches any of the terms of this Agreement, Client will give Stockwell written notice of default setting forth the default. If Stockwell has not remedied the default within 7 days of the date of default, Client may terminate this Agreement and proceed with any or all remedies provided under applicable law.

- 9.3 Attorneys' Fees.** The party not in default will be entitled to reimbursement of any attorneys' fees and expenses incurred due to the default and with respect to the enforcement of remedies.

- 10.0 Jurisdiction.** This Agreement is governed by the laws of the State of South Dakota and any action at law or other judicial proceeding arising from this Agreement must be instituted only in Minnehaha County Circuit Court, Sioux Falls, South Dakota, and may not be removed to federal district court, nor may venue be changed to any other circuit court.
- 11.0 Waiver.** Stockwell's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, will not constitute a waiver of any other term, condition, or covenant, or the breach thereof.
- 12.0 Entire Agreement.** This Agreement, and its attachments, constitutes the entire understanding between Client and Stockwell relating to services to be provided by Stockwell and supersedes any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein. Subsequent modifications or amendments to this Agreement must be in writing and signed by the parties to this Agreement. The foregoing notwithstanding, if Client, its agents, officers, directors, employees, contractors and consultants request Stockwell perform extra Services pursuant to this Agreement, Client must pay for the additional Services even though an additional written agreement is not issued or signed.
- 13.0 Successors and Assigns.** All of the terms, conditions and provisions of this Agreement will include and be for the benefit of and be binding upon the parties and their respective successors and assigns; provided, however, no assignment of this Agreement may be made without written consent of the other party to this Agreement.
- 14.0 Severability.** If any provision of this Agreement is declared invalid, illegal or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Agreement will nevertheless continue in full force and effect, and no provision will be deemed dependent upon any other provision unless so expressed herein.
- 15.0 Force Majeure.** Stockwell will not be liable to Client for delays in performing its obligations, or for the direct or indirect cost resulting from delays that may result from acts of nature, governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond Stockwell's reasonable control. Each party will take reasonable steps to mitigate the impact of any force majeure event. Stockwell will be entitled to an adjustment to the schedule and its compensation under this Agreement to the extent required by the force majeure event.
- 16.0 Underground Utilities.** If included as a Service under this Agreement, Stockwell or its authorized consultant will conduct research in Stockwell's or the consultant's professional opinion is necessary, and will prepare a plan indicating the locations intended for subsurface penetrations with respect to assumed locations of underground improvements. These Services will be performed in a manner consistent with the ordinary standard of care. Client recognizes the research may not identify all underground improvements or their locations, and the information upon which Stockwell and the consultant rely may contain errors or may not be complete. Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless Stockwell and its agents, officers, directors, contractors and consultants from all liability (including reasonable attorneys' fees and court costs) of Client, its contractors or all other persons for delay or additional compensation relating to the identification, removal, relocation, or restoration of utilities, or damages to underground improvements resulting from subsurface penetration locations established by Stockwell.