

## AGREEMENT FOR PROFESSIONAL SERVICES

**Project:** Hugh Robinson Park Improvements

**Stockwell Project No.:** 21486

This Agreement for Professional Services (hereinafter "Agreement") is made and entered into 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

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**Scope of Services:** Client hereby agrees to retain Engineer to perform the Services as outlined in the attached *Proposal for Professional Services* dated October 1, 2021. In general, the Project consists of survey, design, bidding and construction administration services for improvements to Hugh Robinson Park.

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

**Basic Compensation:** Hourly time and materials not to exceed \$21,992.00 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

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The attached Proposal for Professional Services 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: \_\_\_\_\_

# Proposal for Professional Services

City of Harrisburg  
Hugh Robinson Park Improvements

October 1, 2021

Mr. Andrew Pietrus  
City of Harrisburg  
P.O. Box 26  
Harrisburg, SD 57032  
[Andrew.Pietrus@HarrisburgSD.gov](mailto:Andrew.Pietrus@HarrisburgSD.gov)

Re: Proposal for Professional Services  
Hugh Robinson Park Improvements

Dear Andrew,

Thank you for your consideration of our proposal. Stockwell Engineers, Inc. (Stockwell) proposes to provide professional services for Hugh Robinson Park Improvements (the "Project"). Stockwell's services will be provided in the manner described in this Proposal. The **City of Harrisburg** is referred to as the "Client."

## Acknowledgments

**Client:** City of Harrisburg

**Project:** Hugh Robinson Park Improvements

**Description:** In general, the Project consists of survey, design, bidding and construction administration services for improvements to Hugh Robinson Park. Survey limits shall be as identified in the attached illustration.

## Scope of Basic Services

The following is a scope of work meant to describe services to be provided to the Client for the abovementioned project. Work listed below will be completed by Stockwell Engineers, Inc. (Stockwell) unless otherwise stated. Work not explicitly listed shall be considered an additional service. The scope is organized into the following tasks.

### Phase 1 | Project Initiation

- 1.1 Coordinate and conduct project kickoff meeting with Client's staff.
  - 1.1.1 This scope of services is based on the following project understanding.
    - Removal of swing set and park shelter.
    - Inclusive playground.
      - Sensory wall panels.
      - Swing set.
      - Accessible play structure.
      - Accessible surfacing.
    - Locate future picnic shelter (20'x40').
    - Sidewalk from playground to existing street sidewalk and future picnic shelter.



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City of Harrisburg  
Hugh Robinson Park Improvements

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- 1.2 Review all background information made available to Stockwell by Client.

## Phase 2 | Survey

- 2.1 Notify affected property owners of pending survey.
- 2.2 Request permission to survey on private property. Where denied, Client shall negotiate to provide Site access.
- 2.3 Research existing easements and plats of record at county courthouse for properties within and adjacent to the project. Client to provide title search if necessary.
- 2.4 Locate existing boundary markers at the time of the survey.
- 2.5 Establish benchmarks and control points throughout site.
- 2.6 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.
- 2.7 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 appropriate One Call System, if available, to arrange for the location of utilities at the time of survey.
- 2.8 Prepare topographic survey utilizing AutoCAD Civil 3D for use in development of plan documents.

## Phase 3 | Schematic Design

- 3.1 Propose general layout and alignment of improvements. Improvements to be designed to local industry accepted standards. Where available, Stockwell shall implement Client's published standards.
- 3.2 Review preliminary layouts with Client's staff.
- 3.3 Develop preliminary opinion of estimated construction costs for the Project.
- 3.4 Prepare preliminary plan submittal. Preliminary plan to contain information suitable to convey to the Client the following:
  - 3.4.1 General layout of improvements.
  - 3.4.2 Preliminary opinion of estimated construction costs.
- 3.5 Submit one electronic pdf copy of the preliminary plan to Client for review.
- 3.6 Submit one electronic pdf copy of the preliminary plan to the following entities for comment.
  - 3.6.1 Private utility companies.
- 3.7 Address comments to review documents and incorporate into final deliverables.
- 3.8 Deliver to Client one electronic pdf copy of the finalized preliminary plan.

*Deliverables: Preliminary plan; and cost estimates.*

## Phase 4 | Design Development

- 4.1 Layout and design the project improvements based on Client approved preliminary plan.
- 4.2 Design improvements in coordination with Client's staff.
- 4.3 Design improvements to local industry accepted standards. Where available, Stockwell shall implement Client's published standards.
- 4.4 Design project to comply with the Americans with Disabilities Act (ADA). Notify Client of conditions which prevent or limit compliance with the ADA. Client to provide Stockwell guidance for proceeding or variances from the ADA.
- 4.5 Design general site grading and drainage patterns in accordance with minimum industry standards, unless Client requires other design standards.
- 4.6 Design landscape restoration complying with Client's minimum design requirements and/or standards.
- 4.7 Determine removal limits for the Project site.



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- 4.8 If applicable, prepare Notice of Intent (NOI) and deliver to Client to execute. Client to submit NOI to permit authority.

*Deliverables: Notice of Intent.*

## Phase 5 | Construction Documents

- 5.1 Finalize design.
- 5.2 Prepare construction documents. Where applicable, Stockwell shall utilize Client's drafting standards. Construction documents to contain information suitable for contractors to provide construction pricing or bidding. Final construction documents provided by Stockwell will contain the Professional Seal of an Engineer licensed in the State of the project site, and will be suitable for review by permitting agencies with jurisdiction over the project.
- 5.3 Perform Internal Quality Assurance Procedures.
- 5.4 Submit three copies of construction documents and Stockwell's opinion of probable construction cost to Client for review.
- 5.5 Address comments to review documents and incorporate into final deliverables.
- 5.6 Deliver to Client an electronic pdf copy of Stockwell's opinion of probable construction cost and three paper copies of final construction documents for bidding purposes.

*Deliverables: Opinion of probable construction cost; and construction documents for bidding purposes.*

## Phase 6 | Bidding

- 6.1 Provide bidding documents to prospective bidders.
- 6.2 Maintain a list of plan holders.
- 6.3 Answer any questions arising throughout the bidding process and prepare addendums as required.
- 6.4 Attend the bid opening and administer letting.
- 6.5 Deliver to Client tabulation of bids received and letter of recommendation for awarding the construction contract.
- 6.6 Attend council meeting to present recommendation to Client.

*Deliverables: Addendums; tabulation of bids received; and recommendation of award.*

## Phase 7 | Construction Administration

- 7.1 Prepare construction agreement and submit to Contractor for signature.
- 7.2 Review construction agreement and accompaniments provided by the Contractor. Client's legal staff to review Contractor's bonds and insurance for authenticity.
- 7.3 Prepare Contractor's notice to proceed.
- 7.4 Deliver paper copies of contract documents for Client to execute and distribute to Contractor and other respective agents.
- 7.5 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.
- 7.6 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.
- 7.7 Review and make comment on shop drawings or other product submittals from contractor.
- 7.8 Mark removal limits of appropriate items.
- 7.9 Conduct site visits when significant work is being completed to determine generally if Client's contractors are proceeding in accordance with the contract documents. Prepare progress reports confirming construction progress, deviations from the plans and specifications and work performed. Submit to Client copies of the progress reports.



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- 7.10 Attend coordination meetings with Contractor, estimated at biweekly during construction.
- 7.11 Maintain and update the Storm Water Pollution Prevention Plan (SWPPP) as required.
- 7.12 As required under the construction contract, conduct final inspections and deliver to contractor "punch list" of items requiring completion or correction.
- 7.13 Submit to Client certificate of completion, documenting compliance of work with the contract documents and start of Contractor's warranty.
- 7.14 Prepare monthly progress payment request forms for Client and Contractor to execute.
- 7.15 Review change order requests made by Contractor and provide recommendation to Client to approve or deny such claims. Work added to the Contractor's contract resulting in additional effort by Stockwell shall be considered an additional service.
- 7.16 Prepare final change order to reflect as-built quantities and final pay request forms for Client and Contractor to execute.
- 7.17 Prepare Notice of Termination (NOT) for Client to execute. Client to submit NOT to permit authority.

*Deliverables: Executed contract documents; contractor's notice to proceed; preconstruction meeting minutes; change orders; pay requests; progress reports; certificate of completion; punch lists; and notice of termination.*

## Phase 8 | Construction Staking

- 8.1 Mark proposed improvements and elevations as shown on the plans.
- 8.2 Reset boundary markers found at the time of survey but are removed during construction.

## Additional Services

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.

- Geotechnical or other exploratory services.
- Materials testing.
- Title search of properties.
- Private utility locate.
- Review or filing fees.
- Public meetings.

## Compensation

Compensation for services provided by Stockwell pursuant to this Proposal will be on an **hourly time and materials basis, in an amount not to exceed \$21,992.00 excluding sales or excise tax**. Stockwell's detailed Project Fee Estimate and current Hourly Rate Schedule are attached. Client must make payments in accordance with Item B of the Standard Terms and Conditions attached to this Proposal.

Where compensation for Basic Services through Standard Hourly Rates method of payment is specified, Owner shall pay Stockwell for Basic Services as follows:

- 1.1 An amount equal to the cumulative hours charged to the Project by each class of Stockwell's personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Stockwell's Consultants' charges, if any.
- 1.2 The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Stockwell's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Stockwell's Consultants' charges.



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- 1.3 Stockwell's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
- 1.4 When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Stockwell that the total compensation amount thus estimated will be exceeded, Stockwell shall give Client written notice thereof, allowing Client to consider its options, including suspension or termination of Stockwell's services for Client's convenience. Upon notice, Client and Stockwell promptly shall review the matter of services remaining to be performed and compensation for such services. Client shall either exercise its right to suspend or terminate Stockwell's services for Client's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Stockwell, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Client decides not to suspend Stockwell's services during the negotiations and Stockwell exceeds the estimated amount before Client and Stockwell have agreed to an increase in the compensation due Stockwell or a reduction in the remaining services, then Stockwell shall be paid for all services rendered hereunder.

Sincerely,

STOCKWELL ENGINEERS, INC.

Jon Brown, P.E.  
President





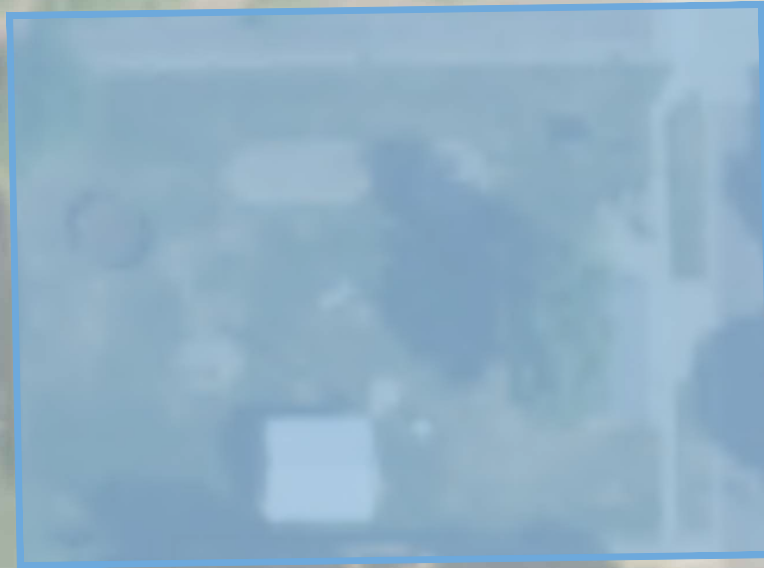
Scale: 1" = 60'

Main Street

Columbia Street

Prairie Street

Elm Street




File Location: S:\Projects\2021\P21486 - Hugh Robinson Park Imp (Harrisburg)\Exhibits\Working Files\CAD Files\21486 - survey limits.dwg \ Plot Date: 9/30/2021 3:53 PM

**Survey Limits**  
Hugh Robinson Park



9/30/2021 SEI#21486



	<b>CLIENT</b>		City of Harrisburg								<b>Project Fee Estimate</b>		
	<b>PROJECT:</b>		Hugh Robinson Park Improvements										
Task Description	<b>Estimated Person Hours Required</b>										<b>Totals by Task</b>		
	David Locke	Kristin Satterness	Anthony Miller	Joe Whitlock	Chad Barutt	Logan Hanzel	Elijah Zuehlke	Pam Kruger	Beth Sayler	Katie Lee			
Survey	\$167.10	\$98.00	\$80.40	\$176.90	\$122.90	\$89.50	\$89.50	\$130.80	\$111.20	\$85.60	26	\$460	\$3,136
Design & Bidding	22		40						24	8	94	\$50	\$10,296
Construction	10	30			8	8		6		8	70	\$780	\$8,560
											<b>Total Project Fee</b>		<b>\$21,992</b>



## Schedule of Billing Rates

Effective January 1, 2021

Principal	\$243.10 per hour
Engineer VIII	\$230.50 per hour
Engineer VII	\$182.40 per hour
Engineer VI	\$171.50 per hour
Engineer V	\$160.90 per hour
Engineer IV	\$156.90 per hour
Engineer III	\$152.60 per hour
Engineer II	\$142.00 per hour
Engineer I	\$134.30 per hour
Engineer/Technology Student	\$63.60 per hour
Senior Project Manager	\$216.30 per hour
Project Manager	\$186.60 per hour
Associate Project Manager	\$152.40 per hour
Construction Inspector II	\$124.50 per hour
Construction Inspector I	\$114.40 per hour
Water Operator/Consultant	\$103.00 per hour
Wastewater Operator/Consultant	\$103.00 per hour
Land Surveyor VII	\$176.90 per hour
Land Surveyor VI	\$168.30 per hour
Land Surveyor V	\$151.50 per hour
Land Surveyor IV	\$134.80 per hour
Land Surveyor III	\$128.90 per hour
Land Surveyor II	\$123.20 per hour
Land Surveyor I	\$111.20 per hour
Landscape Architect VI	\$167.10 per hour
Landscape Architect V	\$156.70 per hour
Landscape Architect IV	\$146.50 per hour
Landscape Architect III	\$136.30 per hour
Landscape Architect II	\$107.70 per hour
Landscape Architect I	\$101.00 per hour
Landscape Designer II	\$98.00 per hour
Landscape Designer I	\$80.40 per hour
Technician VI	\$130.80 per hour
Technician V	\$122.90 per hour
Technician IV	\$111.20 per hour
Technician III	\$101.00 per hour
Technician II	\$95.30 per hour
Technician I	\$89.50 per hour
Administration IV	\$101.10 per hour
Administration III	\$93.40 per hour
Administration II	\$85.60 per hour
Administration I	\$77.90 per hour
Electronic Survey Equipment	\$52.80 per hour
Mileage	current IRS mileage rate

Stockwell reserves the right to adjust the rates.

## 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; and (2) 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.

**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 \$3,000,000 in the aggregate.

(d) Professional liability insurance of \$1,000,000 per occurrence and in the aggregate.

**1.2 Professional Liability.** Stockwell agrees to indemnify and hold Client harmless from and against claims, losses, damages, expenses, costs, including reasonable attorney's fees and expenses, but only to the proportionate extent caused by the negligence of Stockwell.

**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.

**1.6 Warranty.** Stockwell makes no warranties of any kind, including any implied warranty of merchantability or of fitness for any particular purpose.

**2.0 Documents.** 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 is limited solely to the correction of residual errors, minor maintenance, or updates as needed.

**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.** Either party may, by thirty (30) days written notice to the other, terminate this agreement in whole or part at any time. Upon receipt of notice, a party shall immediately discontinue all services affected, unless the notice directs otherwise. If the termination is for the convenience of the Client, no amount shall be allowed for Stockwell for unperformed service, but Stockwell shall be compensated for services rendered through the date of termination notice.

**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.

**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.