



AGREEMENT FOR PROFESSIONAL SERVICES

Project: New Wastewater Treatment Facility

Stockwell Project No.: 18242

This Agreement for Professional Services (hereinafter "Agreement") is made and entered into this 6th day of August, 2018, 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 August 6, 2018. In general, the Project consists of 30% design engineering services for a future wastewater treatment facility (the "Project").

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

Basic Compensation: Hourly time and materials not to exceed \$474,977 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: _____



18242 | SEI No.
Project Organization | Encl
Team Organization
Project Resumes
Site Exhibit

August 6, 2018

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

BY EMAIL ONLY
Andrew.Pietrus@harrisburgsd.gov

Re: Proposal for Professional Services
New Wastewater Treatment Facility

Stockwell Engineers, Inc. (Stockwell) proposes to provide professional services for New Wastewater Treatment Facility (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 30% design engineering services for a future wastewater treatment facility (the "Project").

2.0 Project Initiation

- 2.1 Attend initial meeting with Client to determine Project concept and scope.
- 2.2 Review all background information made available to Stockwell by Client
 - 2.2.1 Identify any additional information required to proceed with preliminary design.

3.0 Earned Value Management

- 3.1 Define work breakdown structure with values for each.
- 3.2 Utilize 50/50 earning rule.
- 3.3 Prepare monthly illustration indicating project performance.
- 3.4 Provide internal Project management, quality control and coordination of work completed by sub-consultants.

Deliverables: Monthly EVM exhibit.

4.0 Topographic Survey

- 4.1 Notify affected property owners of pending survey.
- 4.2 Research and verify existing easements and plats of record at county courthouse for the property.
- 4.3 Locate existing boundary markers at the time of the survey.
- 4.4 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.
- 4.5 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.

- 4.6 Prepare topographic survey utilizing AutoCAD Civil 3D for use in development of 30% design plan documents.

5.0 30% Design

- 5.1 Establish 30% Design Criteria.
 - 5.1.1 Identify Wastewater flow rates and wastewater strength to serve estimated population by 2040.
 - 5.1.2 Consult with South Dakota Department of Environment and Natural Resources to determine preliminary discharge requirements for National Pollutant Discharge Elimination System Permit (NPDES). Stockwell to inquire about future regulatory limits regarding nutrient removal.
- 5.2 Establish facility location within property acquired by the Client for the purposes of this project.
- 5.3 Identify site constraints due to environmental and/or cultural site assessments.
 - 5.3.1 Procure geotechnical or other exploratory service contract with subconsultant. Stockwell to provide Client copy of subconsultant's 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 provided by its subconsultant.
 - 5.3.2 If needed, procure contract for subconsultant to perform wetland delineation.
 - 5.3.3 Review existing flood plain on file with Federal Emergency Management Agency (FEMA)
 - 5.3.4 Perform a search for cultural resources on the National Registry of Historic Places. If needed, contract for subconsultant to perform Cultural Resources survey of the site and submit results to the South Dakota State Historic Preservation Office for comment.
 - 5.3.5 Consider comments from State and Federal agencies included in the facility plan regarding the proposed project.
- 5.4 Existing lift station
 - 5.4.1 Evaluate and establish improvements to existing lift station to convey wastewater to the proposed treatment facility
 - 5.4.2 Establish preliminary alignment and pipe size for force main to convey wastewater to the proposed treatment facility
 - 5.4.3 Consider future expandability for all items.
- 5.5 Headworks
 - 5.5.1 Establish capacity, layout and location for bar screen including hydraulic channel and profile.
 - 5.5.2 Determine need for grit removal. Establish capacity, layout and location for grit removal including hydraulic channel and profile.
 - 5.5.3 Evaluate immediate and future need for an equalization basin at the new treatment facility. Evaluate adding aeration in the proposed equalization basin. Establish capacity and preliminary hydraulic profile and surface elevations.
 - 5.5.4 Establish location and layout for future odor control.
 - 5.5.5 Consider future expandability for all items.
- 5.6 Final disinfection, biosolids processing and lift station.
 - 5.6.1 Establish layout and location for electrical and control room.
 - 5.6.2 Establish layout and location for shop room.
 - 5.6.3 Effluent lift station and force main to outfall and outfall structure.
 - 5.6.3.1 Determine capacity for pump and force main to convey wastewater from wastewater treatment facility to outfall structure

- 5.6.3.2 Determine Preliminary alignment for force main.
- 5.6.3.3 Establish layout, depth and location for lift station.
- 5.6.4 Biosolids processing and storage.
 - 5.6.4.1 Establish biosolid handling processes for treatment and disposal of biosolids assuming aerobically digested sludge. Determine capacity, layout and location for all processing equipment.
 - 5.6.4.2 Establish capacity, layout and location for biosolids storage
- 5.6.5 Establish layout and location for mechanical room to house aeration blowers.
- 5.6.6 Establish layout, location, capacity and hydraulic profile ultraviolet disinfection.
- 5.6.7 Establish process, layout, location, capacity and hydraulic profile for post aeration.
- 5.6.8 Consider future expandability for all items.
- 5.7 Identify required site utilities.
- 5.8 Prepare preliminary plan submittal. Preliminary plan to contain information suitable to convey to the Client the following:
 - 5.8.1 Layout and location of improvements.
 - 5.8.2 Unit processes.
 - 5.8.3 Construction phasing.
 - 5.8.4 Opinion of estimated construction costs.
- 5.9 Submit one electronic pdf copy of the preliminary plan to Client for review.
- 5.10 Address comments to review documents and incorporate into final deliverables.
- 5.11 Deliver to Client one electronic pdf copy of the finalized preliminary plan.

Deliverables: Preliminary Plan

6.0 Additional Services

- 6.1 If authorized in writing by Client, Stockwell will furnish additional services which are not considered as basic services described above under this Proposal. Additional services provided will be mutually agreed upon by the parties and will be performed for compensation over and above the maximum amount set forth below, if any, otherwise at Stockwell's current hourly rates.
 - 6.1.1 Public meetings.
 - 6.1.2 Cultural resources survey.
 - 6.1.3 Wetland delineation.
 - 6.1.4 Design of Aeromod process.
 - 6.1.5 Peer review.
 - 6.1.6 Construction documents.
 - 6.1.7 Bidding services.
 - 6.1.8 Construction administration services.
 - 6.1.9 Materials testing.
 - 6.1.10 Construction staking.

7.0 Period of Service

- 7.1 Stockwell will endeavor to deliver to Client 30% plan submittal documents within eight (8) months of full execution of this proposal.

8.0 Compensation

- 8.1 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 \$474,977.00 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.

- 8.2 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.

A handwritten signature in black ink, appearing to read "Jon Brown", written over the printed name.

Jon Brown, P.E.
President



CLIENT

City of Harrisburg

PROJECT:

New Wastewater Treatment Facility (30% Design)

Project Fee Estimate

Estimated Person Hours Required

Subconsultants

Task No.	Task Description	Estimated Person Hours Required												Subconsultants				Totals	
		Jon Brown	Gaard Rops	Shashi Prasad	Jim Housiaux	Mitchell Mergen	Ryan Truax	Shane Dennis	Joe Whitlock	Chad Baruff	Mike Seiner	Beth Saylor	Troy Brooks	Katie Lee	Geo	Arch	M/E		Wetlands
2.0	Project Initiation	74				8													82
3.0	Earned Value Management	20				35													55
4.0	Topographic Survey							40	130		99	130							399
5.0	30% Design																		
5.1	Establish 30% Design Criteria			1	1	1	4												7
5.2	Recommend Facility Location				14		25								X			X	39
5.3	Existing LS																		
5.3.1	Upgrade pumps/VFD						20												20
5.3.2	FM to new plant		24																24
5.4	Headworks																		
5.4.1	Bar screen			4	5		24	24											57
5.4.2	Grit removal			1			16	18											35
5.4.3	Equalization basin w/aerator			1	4		18	19											42
5.4.4	Odor control			1	2														3
5.5	Disinfection/biosolids/LS																		
5.5.1	Electric control			42	75		40	58									X	X	215
5.5.2	Shop			29	53		32	42									X	X	156
5.5.3	LS/FM to outfall/structure		45		12		37	25									X	X	119
5.5.4	Biosolids handling/storage			21	53			44									X	X	118
5.5.5	Interior space for blowers			16															16
5.5.6	UV disinfection			22	48		49	33											152
5.5.7	Post aeration			16	52		25	47											140
5.6	Identify req'd site utilities		24		10														34
5.7-5.10	Prepare & submit plan docs		15	13	75	36	69	53			530	608		40					1439
Total Person Hours		94	108	167	404	80	359	363	40	130	530	707	130	40					3152
Billing Rate		\$221.10	\$165.90	\$165.90	\$165.90	\$155.90	\$129.20	\$122.10	\$153.00	\$111.70	\$111.70	\$91.90	\$81.40	\$70.80					
Total Billable for Charged Time		\$20,783	\$17,917	\$27,705	\$67,024	\$12,472	\$46,383	\$44,322	\$6,120	\$14,521	\$59,201	\$64,973	\$10,582	\$2,832	\$15,100	\$27,321	\$13,120	\$17,900	\$468,277
														Expenses				\$6,700	
														Total Project Fee				\$474,977	

Schedule of Billing Rates

Effective January 1, 2018

Principal	\$221.10 per hour
Engineer VIII	\$209.60 per hour
Engineer VII	\$165.90 per hour
Engineer VI	\$155.90 per hour
Engineer V	\$146.30 per hour
Engineer IV	\$142.60 per hour
Engineer III	\$138.80 per hour
Engineer II	\$129.20 per hour
Engineer I	\$122.10 per hour
Engineer Intern	\$103.10 per hour
Land Surveyor VII	\$160.80 per hour
Land Surveyor VI	\$153.00 per hour
Land Surveyor V	\$137.80 per hour
Land Surveyor IV	\$122.60 per hour
Land Surveyor III	\$117.20 per hour
Land Surveyor II	\$112.00 per hour
Land Surveyor I	\$101.20 per hour
Landscape Architect IV	\$133.20 per hour
Landscape Architect III	\$124.00 per hour
Landscape Architect II	\$98.00 per hour
Landscape Architect I	\$91.90 per hour
Landscape Intern	\$73.10 per hour
Construction Manager II	\$138.60 per hour
Construction Manager I	\$128.80 per hour
Construction Inspector II	\$113.30 per hour
Construction Inspector I	\$104.00 per hour
Technician VI	\$119.00 per hour
Technician V	\$111.70 per hour
Technician IV	\$101.20 per hour
Technician III	\$91.90 per hour
Technician II	\$86.60 per hour
Technician I	\$81.40 per hour
Administration IV	\$92.00 per hour
Administration III	\$85.00 per hour
Administration II	\$77.90 per hour
Administration I	\$70.80 per hour
Electronic Survey Equipment	\$49.90 per hour
Mileage	current IRS mileage rate

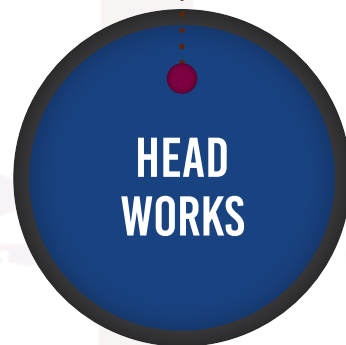
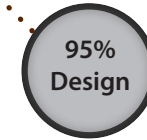
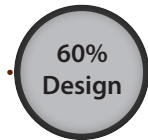
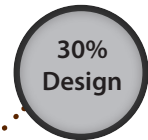
HARRISBURG WWTF

PROJECT ORGANIZATION



LEGEND

- STOCKWELL
- FUTURE STOCKWELL
- PEER REVIEW FIRM
- AEROMOD DESIGN FIRM



\$549,000

\$1,511,000

\$5,100,000

\$11,205,000

\$1,957,000

- Pump/VFD
- Force Main to New Plant

- Bar Screen

- Aeromod
- Concrete Basin
- Equipment

- Electrical Control
- Shop Area
- Lift Station/Force Main to Outfall
- Biosolids Handling/Storage
- UV Disinfection
- Post Aeration

- Sludge Removal
- Regrade Cell
- Equalization

HARRISBURG WWTF

TEAM ORGANIZATION



CITY OF HARRISBURG



Jon Brown, P.E.
Project Manager



Mitch Mergen, P.E.
Project Manager
EVM



Joe Whitlock, P.L.S.
Survey Manager



Jim Housiaux, P.E.
Wastewater Engineer
Plant Design



Gaard Rops, P.E.
Site Design Engineer



Shashi Prasad, P.E.
Wastewater
Plant Design
Lift Station
Head Works
Final Disinfection



Ryan Truax, E.I.T.
Wastewater
Plant Design
Lift Station
Final Disinfection



Shane Dennis
Wastewater
Plant Design
Lift Station
Final Disinfection

HARRISBURG WWTF

PROJECT RESUMES



JON BROWN, P.E.
PROJECT MANAGER

Jon is President and Principal Engineer for Stockwell Engineers Inc., and has over 25 years experience with municipal infrastructure throughout the Midwest. As designated City Engineer for various communities, HE has been highly involved in municipal policy and standards that relate to the design and construction of public works improvement projects throughout the region.



MITCH MERGEN, P.E.
PROJECT MANAGER - EARNED VALUE MANAGERKAL

Mitch utilizes his experience in project design and construction administration to facilitate the successful completion of projects he is involved with. Mitch's ability to manage a project from the preliminary design to completion exemplifies the process of a successful project. He is involved in all facets of the design of municipal projects in Sioux Falls and several surrounding communities. These responsibilities include street



JIM HOUSIAUX, P.E.
WASTEWATER ENGINEER

Jim has over 30 years experience in wastewater design. Most of his experience has been in evaluating and recommending wastewater treatment solutions for municipal and industrial clients with an emphasis on wastewater conveyance, treatment, and discharge in compliance with regulatory permits. His municipal experience ranges from simple land based treatment processes to a variety of mechanical treatment processes.



SHASHI PRASAD, P.E.
WASTEWATER ENGINEER

Shashi has 40 years of experience in water and wastewater engineering. His experience as a core designer includes a wide range of projects including lift stations, oxidation ditches, sequencing batch reactors, clarifiers, screening facilities, headworks, odor control, chemical feed equipment and chemical storage equipment among other projects.



RYAN TRUAX, E.I.T.
WASTEWATER DESIGN

Ryan works primarily on capital improvement planning, rate studies, water distribution modelling as well as water and wastewater master planning. He has played key roles in design of well #7 for the City of Brandon. He ran the pilot test for the HMO chemical feed improvements for the Brandon water treatment facility and assisted in the final design.

HARRISBURG WWTF

PROJECT RESUMES



GAARD ROPS, P.E.
SITE DESIGN

Gaard's experience at Stockwell Engineers has primarily been in the design, plan and specification preparation, construction observation and administration of various street and utility reconstruction projects, which include street rehabilitation, urban street design, water main design, and sanitary and storm sewer design.



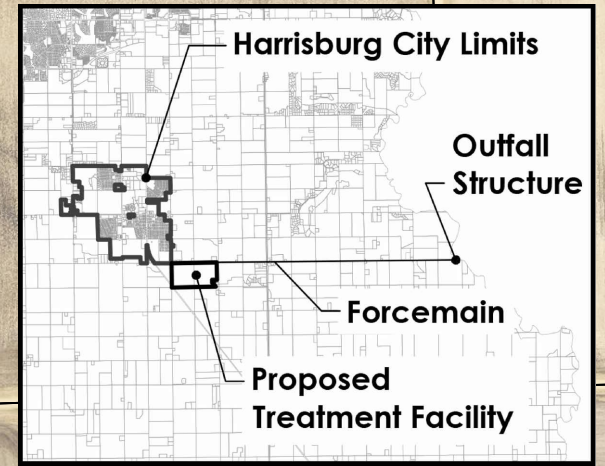
SHANE DENNIS
WASTEWATER DESIGN

Shane's experience is in municipal design with experience in environmental engineering. Shane has experience in designing and performing construction administration services for municipal and industrial projects. Shane will primarily be involved wastewater process design.



JOE WHITLOCK, P.L.S.
SURVEY MANAGER

Joe's primary responsibility is to serve as survey manager for boundary, hydrographic, preliminary topographic, and construction staking on projects. He has worked on boundary surveys for power line corridors in South Dakota, Minnesota, Iowa, and Wyoming. He also does boundary and platting for commercial, residential, and agricultural sites throughout South Dakota.



476th Avenue

Total Site
±220.5
Acres

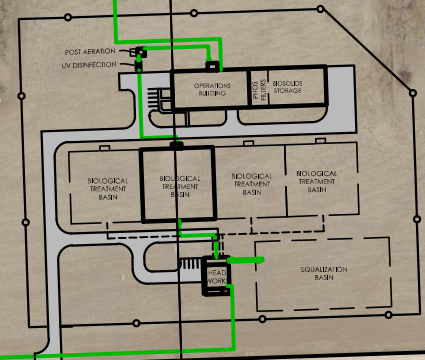
KKKP PROPERTY LLLP
CONTAINING ±150.0 Acres

274th Street

PEDERSON AG LLC
CONTAINING ±70.5 Acres

477th Avenue

Nine Mile Creek



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.