



Regular Meeting of the City Council

September 16, 2019 – 7:00 p.m.

City Hall

PROPOSED AGENDA

- A. Call to Order
- B. Roll Call
- C. Pledge of Allegiance
- D. Approval of Agenda
- E. Approval of Minutes: September 3, 2019 Regular Meeting
- F. Agenda Items
 - 1. Ordinance 2019-08 – Supplemental Budget #1 – 2nd Reading
 - 2. Ordinance 2019-09 – FY2020 Budget – 2nd Reading
 - 3. Ordinance 2019-10 – Detached Structures Update – 1st Reading
 - 4. Streeter Drive Improvements Contract - JEO
- G. Community and Council Input
- H. Executive Session*
 - 1. Contractual
 - 2. Personnel
- I. Approval of Bills
- J. Adjournment

APPROVED
North Sioux City, South Dakota
City Council Regular Meeting Minutes
September 3, 2019

Meeting called to order at 7:00 p.m. by Mayor Fredericksen. Benson, Berg, Blaeser, Carpenter, Croyley, Green, Parks, and Slater were present. Also, in attendance was City Administrator Ted Cherry, City Attorney Darrell Jesse, and City Finance Officer Mike Hamm.

Mayor Fredericksen led the Pledge of Allegiance.

Motion by Parks, second by Croyley to approve the amended agenda. All members present voted aye.

1. Switch items 5 and 7.
2. Change executive session from contractual to personnel.

Motion by Green, second by Berg to approve the minutes from the August 19, 2019 Council Meeting. All members present voted aye.

Cherry presented the council with the 2nd reading of Ordinance 2019-05 Storage Containers. Cherry did receive an email from Bob LaCroix from Monaco Casino saying they did currently have a storage container by the casino and were planning to keep it long term. Croyley asked what brought this ordinance about. Carpenter said she thinks they should look at an ordinance that separates out residential and businesses. Croyley asked how many are currently in the central business district. Croyley asked if this ordinance allowed to grandfather in the current businesses. Cherry stated that this ordinance was written to not grandfather in businesses that currently have the storage containers. Jeff Rabbitt owner of Rabbitt Vision asked when the central business portion of the city was implemented and why the council would only put the ordinance in place just for central businesses and not all businesses.

Motion by Croyley, second by Berg, to deny the 2nd reading of Ordinance 2019-05-Storage Containers. All members present voted aye.

Motion by Berg, second by Benson, to approve the 2nd reading of Ordinance 2019-06 – Right of Way Maintenance. All members present voted aye.

PROPOSED ORDINANCE 2019-06

AN ORDINANCE AMENDING THE NORTH SIOUX CITY CODE OF ORDINANCES TITLE 8 HEALTH AND SAFETY CHAPTER 8.08 NUISANCES BY ADDING A NEW SECTION, 8.08.45, WHICH REQUIRES PROPERTY OWNERS TO MAINTAIN THE RIGHT OF WAYS ABUTTING THEIR PROPERTY.

BE IT ORDAINED, by the Governing Body of the City of North Sioux City, South Dakota and it is hereby ordained by authority of the same that Title 8, Chapter 8.08 be amended as set forth below.

8.08.45 Maintenance of Right-of-Ways

A. The maintenance of property located within a right-of-way shall be the responsibility of the property owner which is adjacent to and abuts the right-of-way. Maintenance includes, but is not limited to, the removal of dead, dangerous, and/or noxious vegetation, keeping the grass cut below the seven inch (7”) requirement, and keeping the property free from any and all nuisances listed within this chapter.

B. Notice will be given to the property owner when a violation is discovered within the abutting right-of-way. Once notice is provided, the owner will have five (5) days to bring the property into compliance. If the owner fails or refuses to comply, the City is authorized to bring the property in the right-of-way

into compliance and bill the owner of the adjacent property to recover the cost. Failure to pay the bill within thirty (30) days may result in an assessment on the owner's property to collect the money owed to the City. In lieu of special assessment, the City may institute civil action against the owner to recover the cost.

Dated at North Sioux City, South Dakota this ___ day of _____ 2019

THE GOVERNING BODY OF THE CITY
OF NORTH SIOUX CITY, SOUTH DAKOTA

By: _____
Randy Fredericksen, Mayor

ATTEST;

By: _____
Mike Hamm, Finance Officer

Motion by Cropley, second by Carpenter to approve 2nd reading of Ordinance 2019-07 – Animal Control Language Update. All members present voted aye.

PROPOSED ORDINANCE 2019-07

AN ORDINANCE AMENDING THE NORTH SIOUX CITY CODE OF ORDINANCES TITLE 6 ANIMALS BY ADDING ADDITIONAL LANGUAGE ON FEES, LICENSING, AND DESTRUCTION, TO ALTER CURRENT LANGUAGE BY REMOVING MENTION OF FINANCE OFFICER, ANIMAL CONTROL OFFICER, POUND MASTER AND DESIGNEES BY REPLACING IT WITH ANIMAL CONTROL AND THE ANIMAL CONTROL OFFICE AND TO ADD LANGUAGE THAT MAKES LEAVING ANIMALS IN HAZARDOUS PLACES CONSIDERED NEGLIGENCE.

BE IT ORDAINED, by the Governing Body of the City of North Sioux City, South Dakota and it is hereby ordained by authority of the same that Title 6 be amended as set forth below.

6.04.020 Animal Control Office created.

There is created the office of animal control of North Sioux City, South Dakota the duties of which shall be to carry out the provisions of the animal control ordinances of the city. The duties of the animal control office, as defined herein, shall be assumed and performed by the duly authorized designee of the mayor or the mayor's authorized representative

6.08.010 License issuance and fee collection--Office designated.

A. The animal control office is designated as the official agent of the city for the purpose of issuing city dog and cat licenses and collecting fees therefore pursuant to the provisions of this title.

B. The animal control office shall have authority to enter into agreements with other governmental agencies, a corporation, or an individual as a collection agent, for the efficient collection of license fees and the issuance of city dog and cat licenses.

6.08.020 Licenses.

A. Every owner of a domestic pet as listed in section 6.12.050 shall procure a city animal license for each calendar year from the animal control office before the first day of February of the calendar year for which the license is in effect.

B. An animal license is required for every domestic pet over six months of age or a dog or cat under six months of age that is no longer with its dam.

C. All licenses, regardless of date of issue, shall expire on December 31st of the year the license was in effect or upon the expiration of the rabies vaccination, as shown on the furnished certificate of vaccination, whichever date occurs first. Should a new rabies certificate of vaccination be provided, the license will then be valid until December 31st.

D. The annual license fee shall be five dollars for each neutered animal and ten dollars (\$10.00) for each unneutered animal.

E. At the time of making application for the city license, the owner shall furnish to the animal control office a veterinarian's certificate showing that the animal for which the license is sought has been vaccinated and that such vaccination has not expired. In order to take advantage of the lower rate for neutered animals, the owner shall, at the time application is made for an animal license, present a certificate of neutering, signed by a veterinarian, containing a description of the animal, its call name, and a date of neutering if known. Such certificates may be used in subsequent annual license applications. Upon payment of the license fee set forth above, the animal control office shall issue to the owner a license which shall contain the name of the owner, his or her place of residence, and a description of the animal. The animal control office shall keep a duplicate of each license issued as a public record.

Upon issuance of the license, the animal control office, shall deliver or mail to the owner a metal tag, or leg ring, stamped with the number of the license and the year for which it is issued

6.08.040 Display of tag.

The tag issued by animal control pursuant to Section 6.08.020 may be attached by the owner to a substantial collar during the term of the license, and it must be displayed to the animal control office and its designees upon demand. Dogs in fenced kennels, fenced exercise yards, on pickets, in buildings, automobiles, or under effective control for exercise, work or training will not be required to wear tags or collars, or leashes, if the stated conditions of training, work or exercise are incompatible with the wearing of such articles. Upon the expiration of the license, the owner shall remove the tag from the dog or cat.

6.08.060 Duplicate tag.

Upon the filing of an affidavit that the license has been lost or destroyed, the owner may obtain another tag upon payment of two dollars to the finance officer or his or her assistants. The animal control office shall enter in the license record the new number assigned.

6.08.080 Violations--Penalties.

Any person who violates any of the provisions of Sections 6.08.020, 6.08.040, 6.08.050 or 6.08.070 shall be subject to a fine not to exceed Twenty-five Dollars (\$25.00) for the first violation and Fifty Dollars (\$50.00) for each subsequent violation occurring within three hundred sixty-five (365) days of the first violation. For all violations there will be a court cost added to the ticket of an amount as may be established by the Unified Judicial System.

6.12.020 Impoundment and ticketing.

A. A domestic animal, as defined by Section 6.12.150, found at large shall be seized and impounded with the Siouxland Humane Society in Sioux City, Iowa; or, at the discretion of the animal control office the owner may be served a citation and/or complaint to appear before the magistrate court to answer charges made thereunder.

B. When a non-domestic animal found at large is trapped the animal control office, shall find a suitable location for the animal outside of the City Limits with the express permission of a property owner outside of the City Limits. In the event a suitable location is not able to be found for the non-domestic animal the animal control office, shall dispose of the non-domestic animal as allowed for by South Dakota Codified Law.

C. If the owner of an impounded domestic animal can be identified, the owner shall be notified by the animal control office within two days that, upon payment of impounding fees, plus cost of food and care, the animal will be returned.

D. An impounded, unlicensed animal or an animal with no identification may be redeemed to the owner thereof upon:

1. Proof of ownership;
2. Payment of the board-and-keep fee, impoundment fee, and any other related costs incurred by the city; and
3. Presentation of the city license for the current year, if required by law, or by purchasing such license which shall not be issued until proof of a current rabies vaccination is presented. (Prior code § 4.0812) (Amended June, 2014)

6.12.030 Disposition of impounded animals.

A. After the expiration of the applicable impoundment period of quarantine, except as otherwise provided, an unredeemed animal, whether licensed or unlicensed, may, at the discretion of the animal control office or the Siouxland Humane Society, be disposed of in the following manner:

1. Be humanely destroyed; or
2. Upon the payment of an adoption fee, be adopted to a person other than the animal's owner.

B. Any animal which appears to be suffering from rabies or infected with disease, or which is mortally injured, or which in the opinion of the administrative authority is vicious, shall not be adopted, or released, but shall be immediately destroyed in a humane manner. If the animal appears to have suffered from rabies or infected with a disease, the body of the animal shall be subject to autopsy and disposal by local or state health officials.

6.12.050 Injured animals at large.

A. In the event that an injured animal, licensed pursuant to the ordinances of North Sioux City, is found at large, the animal control office may cause the animal to be darted, if necessary, and may take the animal into custody. Upon taking an injured animal into custody, the animal control office shall notify the animal's owner of its location and condition. Upon being so notified, the owner of such animal shall either immediately take custody of such animal or cause the animal to be transported to a veterinarian.

B. In the event the injured animal is unlicensed, or in the event that animal control is unable to determine the ownership of the animal, or is unable to contact the owner, or should the owner refuse to either take custody of such injured animal or cause it to be transported to a veterinarian, the animal control office or designee shall transport such animal to the nearest available veterinarian for treatment.

C. If an injured animal at large cannot be darted and it displays vicious tendencies which would make its capture by any other means unduly hazardous, the animal control office may cause the immediate destruction of such animal.

D. In the event that an animal is found at large so seriously injured as to make its recovery improbable or unlikely, the animal control office may, bring the animal to the Siouxland Humane Society for destruction, or shall dispose of the animal as allowed for by South Dakota Codified Law.

E. In the event that animal control office transport an injured animal to the nearest available veterinarian pursuant to the foregoing, he or she shall thereupon offer to give custody of the animal to the veterinarian for treatment at the veterinarian's cost.

In the event that the veterinarian refuses to take custody of such animal, or advises that it would be humane to destroy it, the animal control office shall immediately take the animal to the Siouxland Humane Society for destruction in a humane manner in the interests of humane treatment.

6.12.060 Keeping of dangerous animals prohibited.

A. No persons shall keep, shelter or harbor for any purpose within the city a dangerous animal, as defined in Section 6.04.010.

B. Any person violating this section shall be subject to a fine in the sum of Five Hundred Dollars (\$500.00) for each violation thereof. Each day in which a dangerous animal is kept within the city limits of the city shall constitute a separate violation.

Hearing procedures.

(a) If the animal control office determines there is probable cause to believe that an animal is dangerous, the animal control office shall hold a public hearing to determine whether grounds exist to designate the animal dangerous, and if so, what orders and penalties should apply. If the owner or keeper of the animal does not dispute the charges alleged, he or she may waive the right to a hearing.

(b) At least five business days prior to the hearing, the animal control office shall serve the owner or keeper of the animal with a notice containing a statement of the charges, and the date, time and place of hearing. Service shall be by certified mail with signed receipt requested, first-class mail or personal service.

(c) Evidence received at the hearing must be relevant and of such nature as responsible persons are accustomed to rely on in the conduct of serious affairs. Written statements by a city officer or employee, an officer or employee of the state, or an officer or employee of any law enforcement or fire protection agency acting in the course and scope of their official duties or employment, written records of the animal services department, and statements under penalty of perjury may be accepted as evidence that the fact(s) or condition(s) expressed therein do or do not exist.

(d) The animal control office will consider the following factors in determining whether an animal is dangerous:

(1) Whether any injury or damage to a person by the animal was caused or contributed to by the actions of that person, including acts of physical abuse, tormenting, teasing, or assaulting the animal;

(2) Whether a person injured or damaged by the animal was committing a trespass or other tort upon premises occupied by the owner or keeper of the animal, or was committing or attempting to commit a crime;

(3) Whether any injury or damage to a domestic animal was caused or contributed to by the actions of the domestic animal, including acts of teasing, tormenting, abusing, or attacking the animal;

(4) Whether a person injured or damaged by the animal had gained uninvited and unauthorized entry onto fenced or indoor property of the animal's owner or keeper. As used in this section, "unauthorized entry" does not include entry into a fenced residential front yard unless the yard is locked or posted to prohibit entry;

(5) Whether any injury or damage to a person by the animal was caused while the animal was protecting or defending a person within the immediate vicinity of the animal from an unjustified attack or assault.

Findings after hearing.

After notice and hearing upon charges following the procedure described above in this Section 6.12.060, the owner or keeper of the animal will be provided with written notice, served by first-class mail, of the determination and order issued by the animal control officer. If a determination is made after hearing that an animal is dangerous, the animal will be designated dangerous and may only be owned, kept or maintained by the current or any subsequent owner or keeper pursuant to Section 6.12.090 of this ordinance.

6.12.090 Regulations of keeping dangerous animals.

A. Every person, firm or corporation owning, keeping, sheltering or harboring a dangerous animal shall report such fact to the North Sioux City animal control office, together with the following information:

1. The species name of each such animal;
2. The number of such animals of each species kept on the premises;
3. A physical description of each such animal, including any pet name to which it might respond;

4. The location of such animal or animals, the location of the cage or place of confinement upon or in the premises wherein the animal or animals are kept;

5. In the case of poisonous dangerous animals, the location of the nearest source of anti-venom for that species.

B. Every person, firm or corporation keeping, sheltering or harboring a dangerous animal shall at all times keep such animals securely confined within a cage or other enclosure.

C. No person, firm or corporation owning keeping, harboring or sheltering a dangerous animal shall permit or allow such animal to enter upon or traverse any public property, park property, public right-of-way, or the property of another, except when such animal is being transported while caged or confined.

D. In the event that a dangerous animal is found at large and unattended upon public property, park property, public of right-of-way, or the property of someone other than its owner, such animal may, in the discretion of the animal control office, be destroyed if it cannot be confined or captured, thereby creating a hazard to life or property. The city, its officers and employees shall be under no duty to attempt the confinement or capture of a dangerous animal found at large, nor shall it have the duty to notify the owner of such animal prior to its destruction.

E. Animals from other jurisdictions.

No animal that has previously been determined to be dangerous or vicious after an administrative hearing by any other jurisdiction shall be kept, owned or harbored in the City of North Sioux City

6.12.100 Harboring of strays--Notice to city pound.

Any person who harbors any animal found astray within the city limits shall, within twenty-four (24) hours, notify the animal control office.

6.12.190 Impoundment--Notice.

Any such animal or animals found in the city in violation of any of the provisions of Sections 6.12.160 through 6.12.180 shall be impounded by any police officer or other person appointed by the governing body of the city as its agent and employee for that purpose. The animal control office, shall within twenty-four (24) hours following the impounding of such animal or animals notify the owner of the animal(s) having been impounded as to its location. If the owner of the animal(s) is unknown, such officer shall post written notices in the city hall and the post office in the city describing the animal(s) and stating a time and place when and where the animal(s) was apprehended and the place where it is being kept and how the same may be recovered by the owner.

Exception.

Nothing in this chapter shall limit the right of any person or officer to take any proceedings against a or dangerous animal or its owner or keeper that are otherwise permitted or provided by law, and nothing in this chapter shall be construed to limit the access of any person in violation of state or federal laws.

6.13.020 Determination

The determination of an "irresponsible animal owner" shall be in accordance with the following procedures:

A. The animal control office, upon being satisfied that an owner is an irresponsible animal owner, shall cause to be served upon the owner a written notice of said determination.

B. The written notice shall contain:

1. A finding that the owner is an irresponsible animal owner.
2. A description of the acts relied upon in determining the owner is an irresponsible animal owner.
3. A copy of the appropriate municipal code.
4. A statement advising the owner of the right to request a hearing.

C. Notice. Notice shall be by personal service or by certified mail to the owner.

D. Request for hearing and appeal. Any owner advised that the owner is declared an irresponsible animal owner may have, upon request, a hearing with the officials making said determination as to whether the owner is an irresponsible animal owner. A request for a hearing must be made in writing and

delivered to the office of the city manager or the city manager's designee within the time stated in the notice or it will be conclusively presumed that the owner is an irresponsible animal owner.

A member of designee of the animal control office will act as hearing officer. At the conclusion of the hearing or within three days thereafter, the hearing officer shall render a written decision as to whether the owner is an irresponsible animal owner. An appeal from this decision may be had by filing a written notice with the hearing officer. This appeal will be heard before the city council at a time and place fixed by the council. The findings of the council shall be conclusive.

6.13.040 Impound

The animal control office shall cause the animal to be impounded with the Siouxland Humane Society in Sioux City, Iowa if an owner has been declared an irresponsible animal owner and is found to have an animal within the city.

6.16.020 Neglect of animals.

A person who impounds or confines, in any place, a domestic animal or fowl, or a dog or a cat, and fails to supply that animal during confinement with a sufficient quantity of food and/or water, or who fails to provide that animal with adequate shelter, or who deprives the animal of the necessary sustenance, or who leaves the animal unattended in a hazardous location commits the offense of neglect of animals.

6.16.040 Sanitation of premises.

All structures, pens, coops or yards wherein animals are kept or housed shall be regularly and thoroughly cleaned, and all debris, refuse, manure or other offensive materials removed as often as is necessary to maintain such premises in a clean and sanitary condition at all times, devoid of vermin and free from offensive odors. The animal control office may inspect, or cause to be inspected, any structure or premises, and issue any such order as may be necessary to enforce the provisions of this section, and any other relevant or pertinent rule, regulation or ordinance

6.16.060 Striking an animal with a motor vehicle.

The operator of any motor vehicle which strikes a domestic animal shall stop at once and render such assistance as may be possible, and shall immediately report such injury or death to the animal's owner. In the event the owner cannot be ascertained and located, such operator shall at once report the accident to the animal control office or to the police department.

6.16.090 Neglected animals.

A. A person may take charge of an animal when the owner fails to properly take care and provide for it, and may furnish the animals with proper care, either on the person's own premises or on the premises of the owner. The person has a lien on the animal for the care, and the reasonable value of the care may be collected by the person from the owner.

B. An officer of a society for the prevention of cruelty to animals, may humanely destroy a disabled animal that is neglected or astray.

Dated at North Sioux City, South Dakota this ___ day of _____ 2019

THE GOVERNING BODY OF THE CITY
OF NORTH SIOUX CITY, SOUTH DAKOTA

By: _____
Randy Fredericksen, Mayor

ATTEST;

By: _____
Mike Hamm, Finance Officer

First Reading:
Second Reading:
Publish:
Effective Date:

Motion by Cropley, second by Green to approve the 1st reading of Ordinance 2019-08 – Supplemental Budget #1. All members present voted aye.

Motion by Green, second by Parks to approve the Lift Station Generators Contract Amendment with Stockwell at a cost of \$23,000.00. All members present voted aye.

Motion by Cropley, second by Carpenter to approve the Water Supply Improvements Contract with Stockwell at a cost of \$346,000.00. All members present voted aye.

Council took a 5-minute recess at 8:04pm.

Regular session resumed at 8:09pm.

Community Input:

1. Jeff Rabbitt asked the council what the process is to change the ordinance for garage sizes.
2. Cropley wanted the council to start thinking about accretion ground and to read up on it.

Motion by Berg, second by Green to approve the 1st reading of Ordinance 2019-09 – FY2020 Budget. All members present voted aye.

Motion by Parks, second by Cropley to move into executive session for personnel items at 9:00pm. All members present vote aye.

Regular session resumed at 9:29pm.

Motion by Berg, second by Green to approve the bills as presented. All members present voted aye

| | | |
|--------------------------|----------|-------------------------------------|
| PRINCIPAL LIFE INSUR CO | 2286.55 | SEP2019 LIFE & DTL PREM |
| VERIZON WIRELESS | 93.49 | JUL2019-ACCT 787171140-CHERRY |
| FIRST FINANCIAL BANK USA | 1002.30 | JUL2019 CC CHGS |
| BEN FISH | 131.50 | TORO MWR TIRE |
| BERNARD'S CNCRT CUTTING | 568.00 | 618 LAKESHORE-CNCRT SAWING |
| BOMGAARS | 1430.11 | FUEL PUMP, SCRWDVR, DRINK (90) |
| CHERRY, TED | 45.00 | EXP REIMB-SAM'S CLUB MBRSH |
| CITY OF SIOUX CITY IOWA | 4139.33 | MILITARY BRIDGE |
| COLONIAL LIFE | 122.79 | AUG2019 PREM 8/2, 8/16, 8/30 |
| DAKOTA DUNES/NSC TIMES | 28.00 | SR LIFESTYLES |
| THOMPSON INNVTN | 1630.00 | AUG2019 TECH SUPP |
| ELCTRNC ENGINEERING CO. | 3091.75 | LIB-INSTALL FOB SYSTEM |
| GCR TIRES & SERVICE | 248.50 | TIGER MWR TIRE REP |
| HAWKINS, INC | 3945.11 | CHLORINE (3) |
| HENKINSCHULTZ | 1300.00 | ADVRTSNG |
| HORIZON HEALTH CARE | 241.00 | PRE EMPLOYMNT PHYSICAL-JURICH |
| JACK'S UNFRMS & EQUIP | 1576.55 | LIGHT BAR-2017 DODGE TK |
| JEO CONSULTING GROUP | 13812.50 | ENGINEERING FEES |
| KEVIN ODELL | 7146.49 | EXIT 2-RPRD LIGHTS, RPLC WIRES, HTR |
| LINDBLOM SVCS | 170.00 | NAT'L NIGHT OUT TOILET RNTL |
| MIDAMERICAN ENRG | 13.78 | 602 N DERBY LN-UTLTY CHGS |
| MIDWEST PLAYSCAPES INC. | 3893.00 | PARKS-WOOD CHIPS |
| MIDWEST TURF | 201.50 | TORO MOWER PARTS |

| | | |
|---------------------------|----------|--------------------------------|
| NSC AUTO REP | 39.95 | UNIT 4-OIL CHANGE |
| ONE OFFICE SLTN | 224.13 | PD-COPY PAPER (30),FLDRS (3BX) |
| JAMES POTRATZ | 3300.00 | DIKE MOWING |
| PRESTO-X CO | 236.00 | AUG2019 PEST CNTRL |
| GARY ROAN | 1190.00 | BLD INSPECTOR FEES |
| ROBERTSON IMPLMNT | 458.97 | MOWER PARTS |
| SCHAEFFER'S | 636.12 | SYNTHETIC OIL (7) |
| SD DEPT OF HEALTH | 664.00 | BOD, COLI, SOLIDS, SULFATE |
| SIOUX CITY FOUNDRY | 480.00 | SNOW PLOW BLADES (2) |
| SIOUX CITY JOURNAL | 460.00 | SR CNTR RNWL |
| SPARKLE & SHINE CLNG SVCS | 1451.25 | AUG2019 CLNG (4) |
| STOCKWELL ENGINEERS, INC | 6280.00 | ENGINEERING FEES |
| VERIZON WIRELESS | 838.03 | AUG2019 CELL CHGS (21 LINES) |
| WOODBURY CTY EMERG SVCS | 488.15 | SEP2019 STARCOMM |
| ZUERCHER TECH | 3362.10 | PD-ANNUAL MNTNC RNWL |
| JENSEN INSRNC AGENCY | 435.00 | ANNUAL INSRNC PLCY |
| TRIPLE R REAL ESTATE | 1,000.00 | CNSTRCTN ESMNT |

As required by SDCL 6-1-10, the following is a list of the August 2019 payroll by department:

| | |
|---------------|-------------|
| Finance/Admin | \$25,966.80 |
| Library | \$10,443.64 |
| Police | \$52,925.29 |
| Public Works | \$42,136.85 |

Motion to adjourn by Green second by Parks at 9:30pm. All members present voted aye.

Approved

Randy Fredericksen, Mayor

Attested

Mike Hamm, City Finance Officer



City Council MEMO

504 River Drive
North Sioux City, SD 57049
Phone (605) 232-4276
Fax (605) 232-0506

To: North Sioux City – City Council
From: Ted Cherry, City Administrator
Date: 9.16.2019
Re: Ordinance 2019-08 – Supplemental Budget #1 – 2nd Reading

Background: There a number of funds the administration feels should be moved.

During the Westshore Construction project funds were appropriated for transfer equally from the general, water, and sewer funds. A construction level account was created for the Westshore project as the 519 account. The funds were transferred in large sums and not as expenses were made into the fund. Because of this the Westshore Fund 519 has a remaining balance of \$981,274.24. These funds should be reallocated to go toward improvements they originally came from. The supplemental budget address this by allocated these funds equally to the newly created construction level 500 accounts for a future sewer project and a future Streeter Drive project as well as long term water project fund created in FY2019. The supplemental budget equally distributes the Westshore funds to these new funds in the amount of \$327,091.61 each.

The supplemental also addresses the issue of the generators project. In FY2019 the sewer fund had allocated \$250,000 for two lift station generators. Due to timing the project for this will not be completed until FY2020. The transfer made would go toward a new 500 level construction account that will allow for the funds to be spent over the course of 2 years instead of the currently budgeted 1 year.

Financial Consideration: Transfers of \$1,231,274.84

Recommendation: Administration would recommend the approval of the 2nd reading of Ordinance 2019-08 the Supplemental Budget #1.

ORDINANCE NO. 2019-08
Supplemental Appropriations Ordinance

Be it ordained by the City of North Sioux City that the following sums are supplementally appropriated to meet the obligation of the municipality.

| | CAPITAL PROJECTS 519 | WATER UPGRADES 521 | SEWER UPGRADES 525 | STREETER DRIVE 526 | SEWER FUND 604 |
|-----------------------------|-------------------------|-----------------------|-----------------------|-----------------------|----------------------|
| Operating Transfers Out | \$ 981,274.84 | | | | \$ 250,000.00 |
| Operating Transfers Out | | | | | |
| TOTAL APPROPRIATIONS | <u>\$ 981,274.84</u> | <u>\$ -</u> | <u>\$ -</u> | <u>\$ -</u> | <u>\$ 250,000.00</u> |
| SOURCE OF FUNDING | | | | | |
| Operating Transfers In | | \$ 327,091.62 | | | |
| Operating Transfers In | | | 327,091.61 | | |
| Operating Transfers In | | | | \$ 327,091.61 | |
| Operating Transfers In | | | | | \$ 250,000.00 |
| TOTAL FUNDING | <u>\$ -</u> | <u>\$ 327,091.62</u> | <u>\$ 327,091.61</u> | <u>\$ 327,091.61</u> | <u>\$ 250,000.00</u> |

Dated this 16th day of September 2019

Attested:

Randy Fredericksen, Mayor

Mike Hamm, Finance Officer

First Reading: 9/3/2019
Second Reading: 9/16/2019
Publication Date: 9/26/2019



City Council MEMO

504 River Drive
North Sioux City, SD 57049
Phone (605) 232-4276
Fax (605) 232-0506

To: North Sioux City – City Council
From: Ted Cherry, City Administrator
Date: 9.16.2019
Re: Ordinance 2019-09 – Fiscal Year 2020 Budget 2nd Reading

Background: Ordinance is for the full FY2020 budget. Please refer to your budget binders for additional information

Financial Consideration:

Recommendation: Administration would recommend the approval of Ordinance 2019-09 2nd reading.

ORDINANCE NO. 2019-09
2020 Appropriation Ordinance Budget

Be it ordained by the City of North Sioux City that the following sums are appropriated to meet the obligations of the municipality.

| PART I | SPECIAL REVENUE FUNDS | | | | CAPITAL PROJECT FUNDS | | | | |
|------------------------------------|-----------------------|--------------------|---------------------|----------------------|-----------------------|-------------------|-----------------------|---------------------|---------------------|
| | GENERAL 101 | THIRD PENNY 211 | SECOND PENNY 212 | 911 EMERGENCY 214 | WATER 521 | GENERATORS 524 | SEWER UPGRADES 525 | STREETER DR 526 | LEVY REPAIRS 527 |
| GOVERNMENTAL FUNDS | | | | | | | | | |
| GENERAL GOVERNMENT | | | | | | | | | |
| 4111 Council/Mayor | 195,850.00 | | | | | | | | |
| 4122 City Administration | 157,370.00 | | | | | | | | |
| 4130 Elections | 1,350.00 | | | | | | | | |
| 4140 Financial Admin | 208,320.00 | | | | | | | | |
| 4192 General Govt Bldg | 83,800.00 | | | | | | | | |
| TOTAL GENERAL | <u>646,690.00</u> | | | | | | | | |
| PUBLIC SAFETY | | | | | | | | | |
| 4210 Police | 887,150.00 | | | 76,000.00 | | | | | |
| 4290 Civil Defense | 3,600.00 | | | | | | | | |
| TOTAL PUBLIC SAFETY | <u>890,750.00</u> | | | <u>76,000.00</u> | | | | | |
| PUBLIC WORKS | | | | | | | | | |
| 4310 Streets | 368,945.00 | | | | | | | | |
| 4318 Dike | 20,000.00 | | | | | | | | |
| 4330 Improvements | | | | | 150,000.00 | 600,000.00 | 250,000.00 | 1,828,000.00 | 580,000.00 |
| 4370 Cemetery | 9,750.00 | | | | | | | | |
| TOTAL PUBLIC WORKS | <u>398,695.00</u> | | | | <u>150,000.00</u> | <u>600,000.00</u> | <u>250,000.00</u> | <u>1,828,000.00</u> | <u>580,000.00</u> |
| HEALTH AND WELFARE | | | | | | | | | |
| 4413 West Nile | 7,500.00 | | | | | | | | |
| TOTAL HEALTH AND WELFARE | <u>7,500.00</u> | | | | | | | | |
| CULTURE AND RECREATION | | | | | | | | | |
| 4511 NSC/DV Rec Complex | 33,100.00 | | | | | | | | |
| 4514 Senior Citizen Center | 34,300.00 | | | | | | | | |
| 4520 Parks | 156,700.00 | | | | | | | | |
| 4550 Library | 238,945.00 | | | | | | | | |
| TOTAL CULTURE AND RECREATION | <u>463,045.00</u> | | | | | | | | |
| CONSERVATION AND DEVELOPMENT | | | | | | | | | |
| 4630 Housing & Redevelopment | 1,300.00 | | | | | | | | |
| 4650 Economic Development | | 104,500.00 | 175,000.00 | | | | | | |
| 4652 Planning Comm | 48,550.00 | | | | | | | | |
| 4660 Economic Opportunity | 70,900.00 | 30,000.00 | - | | | | | | |
| TOTAL CONSERVATION AND DEVELOPMENT | <u>120,750.00</u> | <u>134,500.00</u> | <u>175,000.00</u> | | | | | | |
| OTHER FINANCING USES | | | | | | | | | |
| 5110 Transfer Out | 748,000.00 | | 750,000.00 | | | | | | |
| TOTAL CONSERVATION AND DEVELOPMENT | <u>748,000.00</u> | | <u>750,000.00</u> | | | | | | |
| TOTAL APPROPRIATION BY FUND | <u>3,275,430.00</u> | <u>134,500.00</u> | <u>925,000.00</u> | <u>76,000.00</u> | <u>150,000.00</u> | <u>600,000.00</u> | <u>250,000.00</u> | <u>1,828,000.00</u> | <u>580,000.00</u> |

PART II
The following designates the fund or funds that money derived from the following sources is applied to.

| PART II | SPECIAL FUNDS | | | | CAPITAL PROJECT FUNDS | | | | |
|--------------------------------------|---------------------|--------------------|---------------------|----------------------|-----------------------|-------------------|-----------------------|--------------------|---------------------|
| | GENERAL 101 | THIRD PENNY 211 | SECOND PENNY 212 | 911 EMERGENCY 214 | WATER 521 | GENERATORS 524 | SEWER UPGRADES 525 | STREETER DR 526 | LEVY REPAIRS 527 |
| GOVERNMENTAL FUNDS | | | | | | | | | |
| Unassigned Fund Balance Cash Applied | 336,230.00 | | 385,500.00 | | | | | | |
| 3100 Taxes | 2,560,500.00 | 134,000.00 | 535,000.00 | 39,000.00 | | | | | |
| 3200 Licenses and Permits | 86,800.00 | | | | | | | | |
| 3300 Intergovernmental Revenue | 159,000.00 | | | | | | | | |
| 3400 Charges for Goods and Services | 42,100.00 | | | | | | | | |
| 3500 Fines and Forfeits | 18,300.00 | | | | | | | | |
| 3600 Miscellaneous Revenue | 67,500.00 | 500.00 | 4,500.00 | | | | | | |
| 3900 Other Sources | 5,000.00 | | | 37,000.00 | | | | | |
| Subtotal | <u>3,275,430.00</u> | <u>134,500.00</u> | <u>925,000.00</u> | <u>76,000.00</u> | | | | | |
| Operating Transfers In | - | - | - | - | 450,000.00 | 350,000.00 | 210,000.00 | 850,000.00 | 580,000.00 |
| TOTAL MEANS OF FINANCES | <u>3,275,430.00</u> | <u>134,500.00</u> | <u>925,000.00</u> | <u>76,000.00</u> | <u>450,000.00</u> | <u>350,000.00</u> | <u>210,000.00</u> | <u>850,000.00</u> | <u>580,000.00</u> |

PART II The following designates the fund or funds that money derived from the following sources is applied to.

| | ENTERPRISE FUNDS | | |
|---|-------------------|---------------------|--------------------|
| | WATER 602 | SEWER 604 | SOLID WASTE 612 |
| PROPRIETARY AND FIDUCIARY FUNDS | | | |
| Beginning Unrestricted Cash | | | |
| Estimated Revenue | 902,500.00 | 1,193,500.00 | 150,600.00 |
| Transfer in from General Fund | | | 31,000.00 |
| Transfer in from Special Revenue Fund | | | |
| TOTAL AVAILABLE | 902,500.00 | 1,193,500.00 | 181,600.00 |
| Less Appropriations | 442,550.00 | 1,225,600.00 | 180,920.00 |
| Less Transfer Out to General Fund | | | |
| Less Transfer Out to Capital Project Fund | 450,000.00 | 560,000.00 | |
| Less Depreciation Reserve (SDCL 9-21-12) | | | |
| Net position to be retained | <u>9,950.00</u> | <u>(592,100.00)</u> | <u>680.00</u> |

PART III The following is a summary of those funds.

| | DEBT SERVICE FUNDS | | |
|---|----------------------|---------------------|-----------------------------|
| | AMOUNT AUTHORIZED | EXPENDED TO DATE | UNEXPENDED AUTHORIZATION |
| DEBT SERVICE FUNDS | | | |
| Fund 218 - River Valley District #2 TIF | 213,000.00 | | 213,000.00 |
| Fund 310 - Wildflower Bend #3 TIF | 26,000.00 | | 38,279.00 |
| TOTALS | 239,000.00 | | 251,279.00 |

PART IV

The finance officer is directed to certify the following dollar amount of tax levies made in this ordinance to the County Auditor.
\$ 499,000.00

Dated this 16th day of September 2019.

Attested: Randy Fredericksen, Mayor

Mike Hamm, Finance Officer

First Reading: September 3, 2019
Second Reading: September 16, 2019
Publication Date: September 26, 2019



City Council MEMO

504 River Drive
North Sioux City, SD 57049
Phone (605) 232-4276
Fax (605) 232-0506

To: North Sioux City – City Council
From: Ted Cherry, City Administrator
Date: 9.16.2019
Re: Ordinance 2019-10 – Detached Garage Size Limit 1st Reading

Background: There were concerns brought forward regarding the size limitations on detached structures on lots. Mainly this came from garage structures being brought forward that were larger than the allowable size.

The ordinance presented would change the size allowable for detached structures from 1,000 sq feet to 1,250 sq feet. Because of the size change the size of footings would not need to be increased.

The Planning Commission recommended the ordinance to the Council on a 3-2 vote. Concerns were given regarding the height requirements, which is not part of this ordinance. Currently the height requirement is still a maximum of 15ft tall. The Commission choose not to take action to recommend anything on that to the Council. More information would be brought forward to them at a subsequent meeting to discuss that more in depth. If the height requirement changes the footing requirement would also have to change.

The concern about the height comes about because people may want to match the height of their homes with the detached structure. Keep in mind that attached structures can be built larger and to different heights without having to follow the detached structure code.

Financial Consideration: none

Recommendation: Administration would recommend the approval of the 1st reading of Ordinance 2019-10

PROPOSED ORDINANCE 2019-10

AN ORDINANCE AMENDING ‘TABLE 1805.4.2 FLOORS SUPPORTING WALLS OF LIGHT FRAME CONSTRUCTION’ IN TITLE 15, CHAPTER 15.24, SECTION 15.24.046 UNDER THE INTERNATIONAL RESIDENTIAL CODE ADOPTED OF THE NORTH SIOUX CITY CODE OF ORDINANCES

Table 1805.4.2 Floors supporting walls of Light Frame Construction – is amended by adding the following table.

| Monolithic Slab Footings – Group U (Utility) Type Structures Only | | | | |
|---|--|-------------------|--------------------------------|--------------------------------|
| Maximum Horizontal Building Thickness | Minimum Minimum Area Footings (inches) | Width of (inches) | Minimum Depth Footing (inches) | of Minimum Floor Reinforcement |
| 1000-1250 Sq. Ft. | 12 | 12 | #4 top and bottom | 3.5 |

Note:

- a) Footings or foundation shall extend a minimum 6 inches above the finished grade.
- b) Footings shall support not more than 16 inches of masonry block or concrete
- c) Monolithic Slab Footings are not permitted when any portion of the footing is to be located less than six feet to a Group R – Residential Occupancy Use.

Dated at North Sioux City, South Dakota this ____ day of _____ 2019

THE GOVERNING BODY OF THE CITY
OF NORTH SIOUX CITY, SOUTH DAKOTA

By: _____
Randy Fredericksen, Mayor

ATTEST;

By: _____
Mike Hamm, Finance Officer

First Reading:
Second Reading:
Publish:
Effective Date:

PROPOSED ORDINANCE 2019-10

AN ORDINANCE AMENDING ‘TABLE 1805.4.2 FLOORS SUPPORTING WALLS OF LIGHT FRAME CONSTRUCTION’ IN TITLE 15, CHAPTER 15.24, SECTION 15.24.046 UNDER THE INTERNATIONAL RESIDENTIAL CODE ADOPTED OF THE NORTH SIOUX CITY CODE OF ORDINANCES

Table 1805.4.2 Floors supporting walls of Light Frame Construction – is amended by adding the following table.

| Monolithic Slab Footings – Group U (Utility) Type Structures Only | | | | |
|---|--|-------------------|--------------------------------|--------------------------------|
| Maximum Horizontal Building Thickness | Minimum Minimum Area Footings (inches) | Width of (inches) | Minimum Depth Footing (inches) | of Minimum Floor Reinforcement |
| 1250 Sq. Ft. | 12 | 12 | #4 top and bottom | 3.5 |

Note:

- a) Footings or foundation shall extend a minimum 6 inches above the finished grade.
- b) Footings shall support not more than 16 inches of masonry block or concrete
- c) Monolithic Slab Footings are not permitted when any portion of the footing is to be located less than six feet to a Group R – Residential Occupancy Use.

Dated at North Sioux City, South Dakota this ____ day of _____ 2019

THE GOVERNING BODY OF THE CITY
OF NORTH SIOUX CITY, SOUTH DAKOTA

By: _____
Randy Fredericksen, Mayor

ATTEST;

By: _____
Mike Hamm, Finance Officer

First Reading:
Second Reading:
Publish:
Effective Date:



City Council MEMO

504 River Drive
North Sioux City, SD 57049
Phone (605) 232-4276
Fax (605) 232-0506

To: North Sioux City – City Council
From: Ted Cherry, City Administrator
Date: 9.16.2019
Re: Streeter Drive Contract - Stockwell

Background: For a number of years the Council has discussed re-routing Streeter Drive and taking it West to connect it to Sodrac Drive. This is a recommendation from the traffic study that was approved with the SD DOT and Dakota Dunes. Also, in 2019 a chip seal was budgeted, but after further investigation an overlay would be a better option. Both projects are requested to be budgeted in FY2020.

The contract for services is from Stockwell in the amount of \$62,196. A portion of the contract would be on an hourly basis and the whole amount may not be needed if less construction administration on site is needed. The contract would cover all costs associated with design and construction of the projects. The estimate on the project is \$1,100,000. This includes a large contingency amount.

Administration has been working with the property owner on acquiring ground for the project. More design specifications are needed to ensure the correct platting is done and the correct land is acquired.

Council should be aware that Administration is actively looking for grant funding for the paving portion of the project. The City may be eligible for a Community Access Grant and will apply for this if the State give an indication this project fits the mold of their grant process. If awarded the grant could pay for up to 80% of the project. If awarded the project for the paving may need to be pushed to 2021 dependent on the State application and award process.

Financial Consideration: \$62,196

Recommendation: Administration would recommend moving forward with the contract with Stockwell for the 2019 Streeter Drive improvements



AGREEMENT FOR PROFESSIONAL SERVICES

Project: Streeeter Drive

Stockwell Project No.: 19025

This Agreement for Professional Services (hereinafter "Agreement") is made and entered into this 4th day of September, 2019, by and between **STOCKWELL ENGINEERS, INC.**, 801 North Phillips Avenue, Suite 100, Sioux Falls, SD 57104, (hereinafter "Engineer") and **CITY OF NORTH SIOUX CITY**, (hereinafter "Client"), for the services described under the Scope of Services (the "Services").

CLIENT: City of North Sioux City

Address: 504 River Drive | North Sioux City, SD 57049

Phone No. (605) 232-4276

Fax No. (605) 232-0506

Scope of Services: Client hereby agrees to retain Engineer to perform the Services as outlined in the attached *Proposal for Professional Services* dated September 4, 2019. In general, the Project consists of survey, design, bidding, and construction administration and staking services to realign Streeeter Drive from the connection to Sodrac Drive north approximately 800' and overlay the remainder to Northshore Drive.

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

Basic Compensation: \$62,196.00 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: _____

Proposal for Professional Services

North Sioux City
Streeter Drive



September 4, 2019

Mr. Ted Cherry
City of North Sioux City
504 River Drive
North Sioux City, SD 57049

BY EMAIL ONLY
Ted.Cherry@NorthSiouxCity-SD.gov

Re: Proposal for Professional Services
Streeter Drive

Dear Mr. Cherry,

Thank you for your consideration of our proposal. Stockwell Engineers, Inc. (Stockwell) proposes to provide professional services for the Street Drive project (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". The **City of North Sioux City** is referred to as the "Client."

Acknowledgments

Client: North Sioux City
Project: Streeter Drive

Description: In general, the Project consists of survey, design, bidding, and construction administration and staking services to realign Streeter Drive from the connection to Sodrac Drive north approximately 800' and overlay the remainder to Northshore Drive. Project limits shall be as identified in the attached illustration.

Scope of 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.

Task 1 | Project Initiation

- 1.1 Coordinate and conduct project kickoff meeting with Client's staff.
- 1.2 Review all background information made available to Stockwell by Client.

Proposal for Professional Services

North Sioux City
Streeter Drive

Task 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 and provide Site.
- 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.

Task 3 | Schematic Design

- 3.1 Assist Client in procuring geotechnical or other exploratory service contracts. Client to contract services separately and provide report to be utilized by Stockwell. 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 Client's agents.
- 3.2 Recommend location and extent of exploratory services necessary for the Project.
- 3.3 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.
- 3.4 Develop preliminary elevations of the roadway and corridor.
- 3.5 Identify rights-of-way (ROW) and easements required for the Project
- 3.6 Review preliminary layouts with Client's staff.
- 3.7 Review preliminary layouts with stakeholders. Anticipated groups include private utilities and neighboring property owners.
- 3.8 Develop preliminary opinion of estimated construction costs for the Project.
- 3.9 Prepare preliminary plan submittal. Preliminary plan to contain information suitable to convey to the Client the following:
 - 3.9.1 General layout of improvements
 - 3.9.2 Impacted stakeholders.
 - 3.9.3 Land acquisitions necessary to construct the Project.
 - 3.9.4 Preliminary opinion of estimated construction costs.
- 3.10 Submit one electronic pdf copy of the preliminary plan to Client for review.

Proposal for Professional Services

North Sioux City
Streeter Drive

- 3.11 Submit one electronic pdf copy of the preliminary plan to the following entities for comment.
 - 3.11.1 Private utility companies.
- 3.12 Address comments to review documents and incorporate into final deliverables.
- 3.13 Deliver electronic pdf copies of the finalized preliminary plan to review entities.
- 3.14 Deliver to Client one electronic pdf copy of the finalized preliminary plan.
- 3.15 Coordinate and conduct public meeting. Prepare informative exhibits and presentations as necessary.

[Deliverables: Preliminary plan, and cost estimates.](#)

Task 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 drainage facilities to intercept and convey runoff in conformance with Client's standards. Identify watershed boundaries based on best available contour data for the area. Determine runoff potential for minor and major storm events. Evaluate flood conditions and inundation levels.
- 4.5 Coordinate roadway design with drainage facilities and underground utilities. Design roadway pavements in conformance with Client's standards. Client's geotechnical firm to perform California Bearing Ratio (CBR) evaluation of existing site and provide recommendations to Stockwell.
- 4.6 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.
- 4.7 Determine removal limits for the Project site.
- 4.8 Coordinate and conduct meetings with private utility companies.
- 4.9 If applicable, prepare Notice of Intent (NOI) and deliver to Client to execute. Client to submit NOI to permit authority.

[Deliverables: Notice of Intent.](#)

Task 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.

Proposal for Professional Services

North Sioux City
Streeter Drive

- 5.5 Submit construction documents to the following entities for comment.
 - 5.5.1 Private Utility Companies.
- 5.6 Address comments to review documents and incorporate into final deliverables.
- 5.7 Deliver copies of final construction documents to review entities.
- 5.8 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.](#)

Task 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.

[Deliverables: Addendums; tabulation of bids received; and recommendation of award.](#)

Task 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 Document conditions of project site prior to construction beginning by means of video.
- 7.10 Conduct maximum of ten 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.

Proposal for Professional Services

North Sioux City
Streeter Drive

- 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.
- 7.18 Conduct one warranty inspection in conformance with the construction contract. Prepare a "punch list" of warranted items requiring completion or correction. Stockwell to deliver punch list to Client and Contractor. Stockwell is not responsible for further coordination of Contractor's repairs. Additional effort spent by Stockwell coordinating repair work shall be considered an additional service and invoiced separately to the Client.

[Deliverables: Executed contract documents; contractor's notice to proceed; preconstruction meeting minutes; change orders; pay requests; certificate of completion; punch lists; and notice of termination.](#)

Task 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.

- Title search of properties.
- Private utility locate.
- Plat.
- Geotechnical or other exploratory services.
- Materials testing.
- Change order work.
- Coordination of warranty repairs.

Proposal for Professional Services

North Sioux City
Streeter Drive

Compensation

Compensation for services provided by Stockwell pursuant to this Proposal will be as outlined below excluding sales or excise tax. 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.

| | |
|---|--------------------|
| ▪ Tasks 1 thru 6 (lump sum) | \$52,456.00 |
| ▪ Tasks 7 thru 8 (hourly not to exceed) | \$9,740.00 |
| ▪ Total | \$62,196.00 |

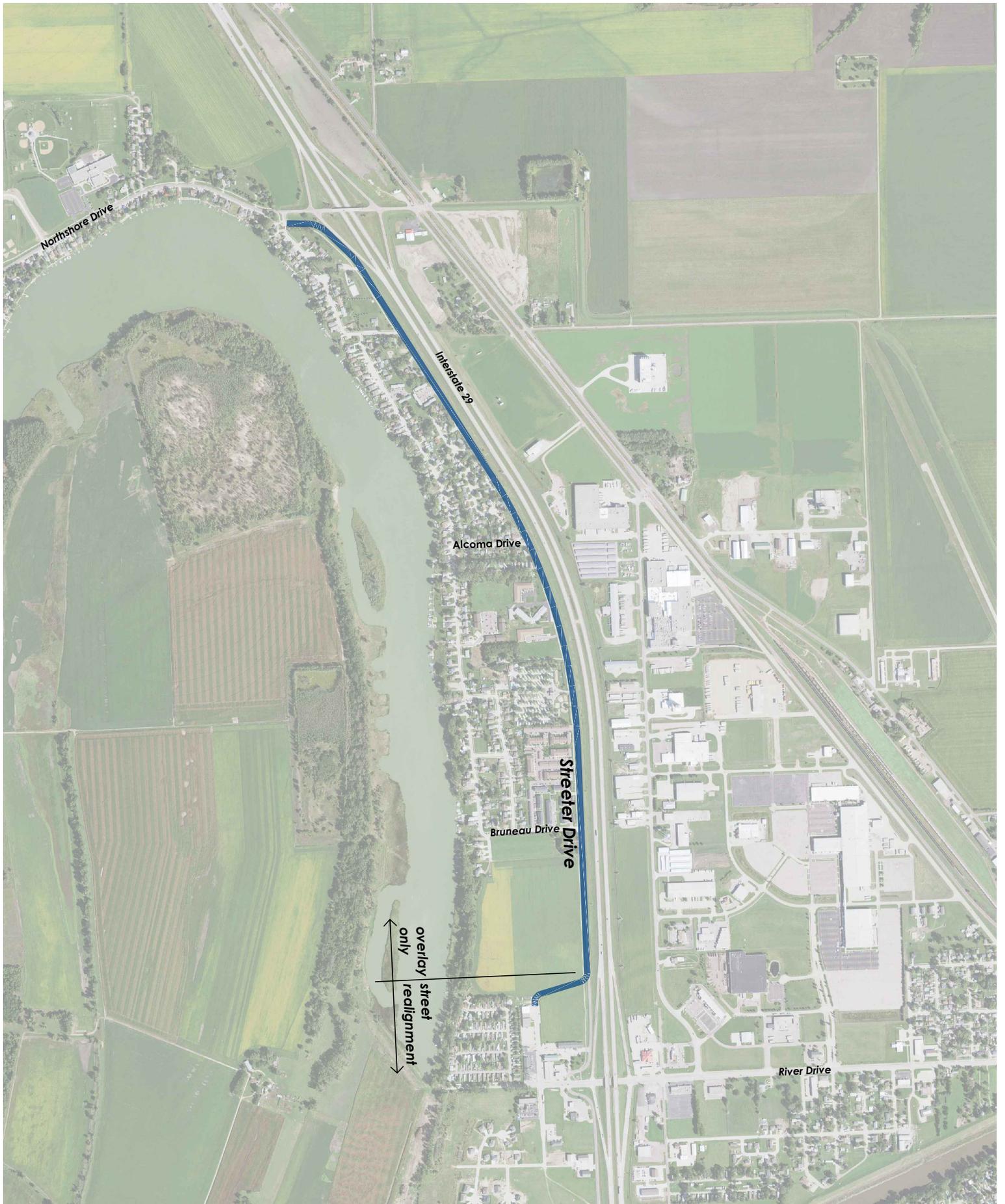
The level of effort required of Stockwell to accomplish the services described in this Proposal may be affected by factors beyond Stockwell's control. Therefore, if it appears at any time compensation for services rendered will exceed the maximum compensation amount, Stockwell will notify Client in writing. Stockwell will not perform 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



19025 - project location.dwg

Project Location Streeter Drive



Schedule of Billing Rates

Effective January 1, 2019

| | |
|-----------------------------|--------------------------|
| Principal | \$229.70 per hour |
| Engineer VIII | \$217.80 per hour |
| Engineer VII | \$172.40 per hour |
| Engineer VI | \$162.00 per hour |
| Engineer V | \$152.00 per hour |
| Engineer IV | \$148.20 per hour |
| Engineer III | \$144.20 per hour |
| Engineer II | \$134.20 per hour |
| Engineer I | \$126.90 per hour |
| Engineer/Technician Intern | \$60.00 per hour |
| Land Surveyor VII | \$167.10 per hour |
| Land Surveyor VI | \$159.00 per hour |
| Land Surveyor V | \$143.20 per hour |
| Land Surveyor IV | \$127.40 per hour |
| Land Surveyor III | \$121.80 per hour |
| Land Surveyor II | \$116.40 per hour |
| Land Surveyor I | \$105.10 per hour |
| Landscape Architect IV | \$138.40 per hour |
| Landscape Architect III | \$128.80 per hour |
| Landscape Architect II | \$101.80 per hour |
| Landscape Architect I | \$95.50 per hour |
| Landscape Designer/Intern | \$76.00 per hour |
| Construction Manager II | \$144.00 per hour |
| Construction Manager I | \$133.80 per hour |
| Construction Inspector II | \$117.70 per hour |
| Construction Inspector I | \$108.10 per hour |
| Technician VI | \$123.60 per hour |
| Technician V | \$116.10 per hour |
| Technician IV | \$105.10 per hour |
| Technician III | \$95.50 per hour |
| Technician II | \$90.00 per hour |
| Technician I | \$84.60 per hour |
| Administration IV | \$95.60 per hour |
| Administration III | \$88.30 per hour |
| Administration II | \$80.90 per hour |
| Administration I | \$73.60 per hour |
| Electronic Survey Equipment | \$49.90 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; (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. Client'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 \$3000,000 in the aggregate.
- (d) Professional liability insurance of \$1,000,000 per occurrence and in the aggregate.

1.2 Standard of Care. Services will be performed in accordance with the standard of professional skill and care required for a project of similar size, location, scope, and complexity, during the time in which the Services are provided.

1.3 Stockwell's Indemnity Obligation. To the fullest extent permitted by law, Stockwell must indemnify and hold harmless Client, and Client's elected and appointed officials if Client is a governmental agency, officers, directors, members, consultants, agents, employees, contractors, and subcontractors of any tier, (the Indemnitees) from and against all claims, losses, damages, liabilities, including reasonable attorneys' fees, costs, and expenses, for bodily injury, sickness, or death, and property damage that may arise from the performance of or the failure to perform Services under the Agreement, but only to the extent caused by the negligent errors, acts or omissions of Stockwell, and its employees, agents and consultants. In the event a third party brings a claim against Client alleging damages and losses caused by or arising out of the negligent errors, acts or omissions of Stockwell and its employees, agents and consultants, then nothing in this Section or otherwise in the Agreement will prevent the Indemnitees from tendering to Stockwell the defense of the claim, or will prevent the Indemnitees from availing themselves of their common law rights to indemnification and contribution. Upon the Indemnitee's tender of the claim to Stockwell, Stockwell will defend the claim alleging damages and losses caused by or arising out of the negligent errors, acts, or omissions of Stockwell, its employees, agents and consultants in the performance of Services under the Agreement, but Stockwell will not have any obligation to defend the Indemnitees with respect to other claims brought by the third party against the Indemnitees.

1.4 Client's Indemnification Obligation. To the fullest extent permitted by law, Client must indemnify and hold harmless Stockwell, its officers, directors, members, consultants, agents, and employees (the "Indemnitees") from all claims, losses, damages, liabilities, including reasonable attorneys' fees, costs, and expenses for bodily injury, sickness, or death, and property damage that may arise from the negligent errors, acts or omissions of Client or Client's elected or appointed officials if Client is a governmental agency and its officers, directors, members, employees and agents, (the "Indemnitor Parties"). In the event a third party brings a claim against Stockwell alleging damages and losses caused by or arising out of the negligent errors, acts or omissions of the Indemnitor Parties, then nothing in this Section or otherwise in the Agreement will prevent Stockwell from tendering to Client the defense of the claim, or will prevent Stockwell from availing itself of its common law rights to indemnification and contribution. Upon Stockwell's tender of the claim to Client, Client will defend the claim alleging damages and losses caused by or arising out of the negligent errors, acts or omissions of the Indemnitor Parties, but Client will not have any obligation to defend Stockwell with respect to other claims brought by the third party against Stockwell and its employees, agents and consultants.

1.5 No Limitation on Liability. In any and all claims against the Indemnitees by any employee of Stockwell, anyone directly or indirectly employed by Stockwell or anyone for whose acts Stockwell may be liable, the indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Stockwell under workers' compensation acts, disability benefit acts, or other employee benefit acts.

1.6 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.

1.7 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.

1.8 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 (the "Construction Administration Services"), 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 any or all of the following circumstances.

1.8.1 A failure to have a licensed engineer (the "Construction Administration Engineer") provide Construction Administration Services which should have resulted in the Construction Administration Engineer determining, prior to completion of the applicable project, there were elements of negligent design for the project caused by Stockwell; or

1.8.2 A failure of the Construction Administration Engineer to provide Construction Administration Services which should have determined construction of the project elements were not completed in accordance with Stockwell's project design.

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

1.10 Intentionally Omitted.

1.11 Intentionally Omitted.

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, treator, 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 if 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 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.

11.0 Entire Agreement. This Agreement, and its attachments, constitutes the entire understanding between Client and Stockwell relating to services to be provided by Stockwell and supersede 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.

12.0 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.

13.0 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.

E. Dispute Mitigation and Resolution.

1.0 Continuation of Services and Payment. Unless otherwise agreed in writing, Stockwell will continue to perform its Services during any dispute mitigation or resolution proceeding. If Stockwell continues to perform, Client will continue to make payments in accordance with the Agreement for amounts not in dispute.

2.0 Direct Discussions. If the parties cannot reach resolution on a matter relating to or arising out of the Agreement, the parties will endeavor to reach resolution through good faith direct discussions between the parties' representatives, who must possess the necessary authority to resolve such matter and who must record the date of first discussions. If the parties' representatives are not able to resolve such matter within five (5) business days of the date of first discussion, the parties' representatives must immediately inform senior executives of the parties in writing that resolution could not be reached. Upon receipt of such notice, the senior executives of the parties must meet within five (5) business days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) days from the date of first discussion, the parties must submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

3.0 Mediation. If direct discussions pursuant to Section 2.0 do not result in resolution of the matter, either party may give written demand for mediation. Within ten (10) days of receipt of such demand, the parties must confer to determine if they can agree on a single mediator to handle the mediation session. The mediator must be an attorney licensed to practice law in the state of South Dakota and must possess substantial experience in mediating commercial disputes. In the event the parties cannot agree on a mediator, they will jointly file a request with the circuit court for Minnehaha County to appoint an experienced impartial mediator for that purpose. Such mediation session must take place, absent extraordinary circumstances or a mutually agreed decision to continue the mediation session to a later date, within twenty (20) days of the appointment of the mediator. The mediation session must take place in North Sioux City, South Dakota. The parties will equally share in the cost of the mediator for the mediation session. Should mediation fail, either party may thereafter file suit in the state court identified below.

4.0 Binding Dispute Resolution. If the matter is unresolved after submission of the matter to mediation, either party may submit the matter to litigation.

5.0 Costs. The costs of litigation and reasonable attorneys' fees for pre-litigation and litigation legal services will be borne by the non-prevailing party.

6.0 Laws/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 Union County Circuit Court, Elk Point, South Dakota, and may not be removed to federal district court, nor may venue be changed to any other circuit court.

7.0 Multiparty Proceedings. All parties necessary to resolve a claim agree to be parties to the same dispute resolution procedure, if possible. Appropriate provisions will be included in all other contracts relating to the project to provide for the joinder or consolidation of such dispute resolution procedures.

8.0 Lien Rights. Nothing in this Article E will limit any rights or remedies not expressly waived by Stockwell that may have under lien laws.