



## **Business Improvement District No. 2 Board Agenda**

2:30 p.m. Meeting

Wednesday, April 15, 2020

City Hall – Small Conference Room Downstairs

(Join our meeting through Zoom at:

<https://zoom.us/j/292828236>)

25 Center Street

1. **Call to Order**

a. Roll Call

2. **Approval of the Minutes**

a. March 13, 2020

3. **Adoption of the Agenda**

4. **Visitors to Be Heard**

a. Offer comments through our Zoom meeting at: <https://zoom.us/j/292828236>

5. **Old Business**

6. **New Business**

a. Discussion, and Review, of Stockwell Engineers' Proposal for Professional Services for the Downtown Streetscape Project. (You may listen to the conversation through the Zoom meeting at: <https://zoom.us/j/292828236>)

7. **Adjourn**

Unapproved Minutes  
Business Improvement District No. 2 Board  
Friday, March 13, 2020 at 1:30 p.m.

The meeting of the City's Business Improvement District No. 2 Board was called to order in the South Dakota Room at Vermillion Public Library on March 13, 2020 at 1:30 p.m.

1) Roll Call

- a) Present: James Waters, Michelle Maloney, Martin Prendergast, Patrick Morrison
- b) Absent: Phyllis Packard
- c) Staff Present: Jose Dominguez (City Engineer), John Prescott (City Manager), James Purdy (Assistant City Manager)

2) Approval of the Minutes

- a) March 11, 2020 minutes  
Moved by Prendergast to adopt March 11, 2020 regular meeting minutes as written, seconded by Morrison. Motion carried 4-0.

3) Adoption of Agenda

Moved by Morrison to adopt the agenda as printed, seconded by Prendergast. Motion carried 4-0.

4) Visitors to be Heard

No comments given.

5) Old Business

None.

6) New Business

- a) Discussion to choose a Consultant to Develop a Scope of Work and Cost for Services.  
Staff reviewed the three presentations heard on March 11<sup>th</sup> from KLJ, Stockwell, and Banner. After reviewing the presentations, and the proposals submitted, Staff asked the Board for further direction on which of the three consultants should be contacted to develop a Scope of Work and Cost for Services. Additionally, Staff explained that after the Board chose a consultant, Staff would develop the Scope of Work and cost for Services with the consultant prior to presenting the items to the City Council. Discussion followed.

Moved by Maloney that the City contact Stockwell Engineers to develop a Scope of Work and Cost for Services, and that these be presented to the City Council for approval after the documents have been approved by the BID #2 Board, seconded by Morrison. Motion carried 4-0.

7) Adjourn

- a) Meeting adjourned at 2:17 p.m.

STOCKWELL ENGINEERS, INC.



## AGREEMENT FOR PROFESSIONAL SERVICES

**Project:** Downtown Streetscape Project

**Stockwell Project No.:** 20054

This Agreement for Professional Services (hereinafter "Agreement") is made and entered into this 27<sup>th</sup> day of March, 2020, by and between **STOCKWELL ENGINEERS, INC.**, 801 North Phillips Avenue, Suite 100, Sioux Falls, SD 57104, (hereinafter "Engineer") and **CITY OF VERMILLION**, (hereinafter "Client"), for the services described under the Scope of Services (the "Services").

**CLIENT:** City of Vermillion

**Address:** 25 Center Street | Vermillion, SD 57069

**Phone No.**

**Fax No.**

**Scope of Services:** Client hereby agrees to retain Engineer to perform the Services as outlined in the attached Proposal for Professional Services dated March 27, 2020. In general, the Project consists of survey, design and bidding services for streetscape improvements to pedestrian infrastructure, streetlights, pedestrian level lights, storm sewer and landscaping within the project limits.

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

**Basic Compensation:** Hourly time and materials not to exceed \$238,318.00 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

City of Vermillion  
Downtown Streetscape Project



March 27, 2020

Mr. José Domínguez  
City of Vermillion  
25 Center Street  
Vermillion, SD 57069

**BY EMAIL ONLY**  
[JoseD@cityofvermillion.com](mailto:JoseD@cityofvermillion.com)

Re: Proposal for Professional Services  
Downtown Streetscape Project

Dear Mr. Domínguez,

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

## Acknowledgments

**Client:** City of Vermillion

**Project:** Downtown Streetscape Project

**Description:** In general, the Project consists of survey, design and bidding services for streetscape improvements to pedestrian infrastructure, streetlights, pedestrian level lights, storm sewer and landscaping within the project limits. 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.
  - 1.2.1 All existing Streetscape Master Plan documents.
  - 1.2.2 City GIS information for project area.

ENGINEERING / LANDSCAPE ARCHITECTURE / SURVEYING

# Proposal for Professional Services

City of Vermillion

Downtown Streetscape Project

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- 1.3 Establish list of Stakeholders.
- 1.4 Develop project website.

## 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 | Design Charrette

- 3.1 Develop analysis of existing 2016 Master Plan created by others.
- 3.2 Create draft Microsoft PowerPoint presentation for use at the charrette.
  - 3.2.1 Maximum of 20 minutes long.
  - 3.2.2 Review existing Master Plan.
  - 3.2.3 Discuss Vermillion and theming opportunities.
  - 3.2.4 Review design element options.
- 3.3 Identify stakeholders for participation in the charrette with assistance from Client.
- 3.4 Develop 2-3 day charrette schedule. At the very least, the charrette will include the following meetings:
  - 3.4.1 Stakeholder meetings.
    - Maximum two (2) hours in length.
    - Topics as described above.
    - Prepare agenda and necessary presentations.
  - 3.4.2 Design team sketch sessions.
  - 3.4.3 Kick-off and wrap-up sessions.
  - 3.4.4 One (1) public meeting/open house.
    - Maximum two (2) hours in length.
    - Gather input on the theming of the project and the existing Master Plan.

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- Answer any questions or comments.
- 3.4.5 Client to provide:
  - Venue.
  - Advertisement.
  - Invitations to stakeholders and public meetings.
  - Catering (as determined by the City).
- 3.4.6 Submit to Client for review and comment.
- 3.4.7 Address Client comments.

## Task 4 | Schematic Design

- 4.1 Recommend location and extent of utility and basement exploratory services necessary for the Project.
- 4.2 Notify the following regulatory agencies about the Project and request their review.
  - 4.2.1 SDDENR agencies.
- 4.3 Notify the City's Historic Preservation Commission about the project and request their review. Client to provide archeological survey, if required.
- 4.4 Propose general layout and alignment of improvements following 2016 Master Plan prepared by others and modified based on design charrette public input. Improvements to be designed to local industry accepted standards. Where available, Stockwell shall implement Client's published standards.
- 4.5 Identify rights-of-way (ROW) and easements required for the Project
- 4.6 Review preliminary layouts with Client's staff.
- 4.7 Develop preliminary opinion of estimated construction costs for the Project.
- 4.8 Prepare preliminary plan submittal. Preliminary plan to contain information suitable to convey to the Client the following:
  - 4.8.1 General layout of improvements
  - 4.8.2 Impacted stakeholders.
  - 4.8.3 Construction phasing.
  - 4.8.4 Preliminary opinion of estimated construction costs.
- 4.9 Submit one electronic pdf copy of the preliminary plan to Client for review.
- 4.10 Address comments to review documents and incorporate into final deliverables.
- 4.11 Deliver electronic pdf copies of the finalized preliminary plan to review entities.
- 4.12 Deliver to Client one electronic pdf copy of the finalized preliminary plan.
- 4.13 Coordinate the scheduling of a public meeting for adjacent property owners and others attending. Notice of the meeting will be mailed to all property owners and property adjacent to the proposed Project site, those in the immediate area who may be directly impacted by construction, and as determined by Client and governmental agencies. Prepare informative exhibits for display at the meeting. Stockwell to lead meeting. City to attend meeting and provide support by assisting with answering questions and addressing concerns of the public. Record minutes and distribute a copy to Client and meeting attendees.
- 4.14 Coordinate the scheduling of individual meetings with stakeholders and property owners (estimated at 20 meetings or at least a meeting with the property owners of each block

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face). Client to assist in determining comprehensive list of required meetings. Anticipated groups include private utilities, area developers, and neighboring property owners. Record minutes and distribute a copy to Client and meeting attendees.

4.14.1 Property owner's shall be asked if their basements protrude under the sidewalk, and if we would be allowed to inspect the adjacent ROW wall within their basement.

- 4.15 Coordinate with Client's legal staff to prepare easements and ROW documents for Client to negotiate and execute. Stockwell will provide legal descriptions and types of easements required.

*Deliverables: Preliminary plan, cost estimates, and ROW documents.*

## Task 5 | Design Development

- 5.1 Layout and design the project improvements based on Client approved preliminary plan.
- 5.2 Design improvements in coordination with Client's staff.
- 5.3 Design improvements to local industry accepted standards. Where available, Stockwell shall implement Client's published standards.
- 5.4 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.
- 5.5 Coordinate streetscape design with drainage facilities and underground utilities. Design streetscape pavements in conformance with Client's standards.
- 5.6 Design street lighting and special event outlets, by sub-consultant.
- 5.7 Design of basement walls at property line, by sub-consultant.
  - 5.7.1 Assumed to be 5 basements/ROW protrusions.
- 5.8 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.
- 5.9 Determine removal limits for the Project site.
- 5.10 Coordinate and conduct meetings with private utility companies.
  - 5.10.1 Consider small cell/5G technology with light poles.
- 5.11 If applicable, prepare Notice of Intent (NOI) and deliver to Client to execute. Client to submit NOI to permit authority.
- 5.12 Update preliminary opinion of estimated construction costs for the Project.
- 5.13 Submit PDF electronic copy of 65% plan documents and Stockwell's opinion of probable construction cost to Client for review.
- 5.14 Address comments to 65% review documents and incorporate into construction documents.

*Deliverables: Notice of Intent.*

## Task 6 | Construction Documents

- 6.1 Finalize design.

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- 6.2 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 or Landscape Architect licensed in the State of the project site and will be suitable for review by permitting agencies with jurisdiction over the project.
- 6.3 Perform Internal Quality Assurance Procedures
- 6.4 Submit three copies of construction documents and Stockwell's opinion of probable construction cost to Client for review.
- 6.5 Submit construction documents to the following entities for comment.
  - 6.5.1 Private Utility Companies.
- 6.6 Coordinate and conduct one public meeting. Prepare informative exhibits and presentations as necessary.
- 6.7 Address comments to review documents and incorporate into final deliverables.
- 6.8 Deliver copies of final construction documents to review entities.
- 6.9 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.
- 6.10 Deliver cost proposal for construction administrative services and construction staking.

*Deliverables: Opinion of probable construction cost; construction documents for bidding purposes; and cost proposal for construction administrative services and construction staking.*

## Task 7 | Bidding

- 7.1 Provide bidding documents to prospective bidders.
- 7.2 Maintain a list of plan holders.
- 7.3 Answer any questions arising throughout the bidding process and prepare addendums as required.
- 7.4 Attend the bid opening.
- 7.5 Deliver to Client tabulation of bids received and letter of recommendation for awarding the construction contract.
- 7.6 Attend council meeting to present recommendation to Client.

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

## 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.

- Coordinating and negotiating land acquisitions.
- Architectural modification to buildings.
- Archeological survey.
- Title search of properties.
- Review or filing fees.
- Development of cost recovery districts.

# Proposal for Professional Services

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- Construction administration services.
- Construction staking.

## Compensation

Compensation for services provided by Stockwell pursuant to this Proposal will be on an **hourly time and materials basis, in an amount not to exceed \$238,318.00 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.

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,

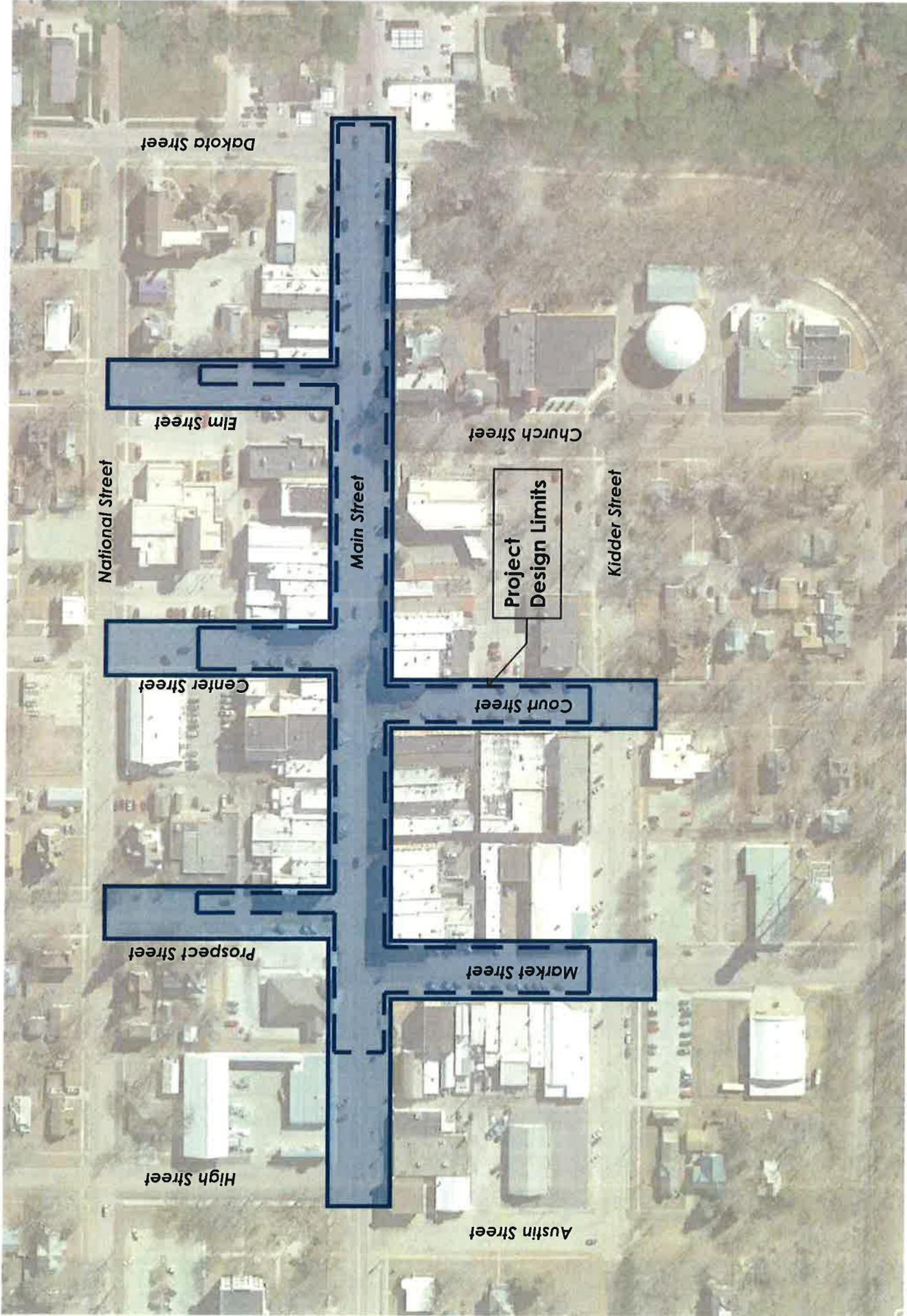
STOCKWELL ENGINEERS, INC.



Jon Brown, P.E.  
President



CLIENT		City of Vermillion												Project Fee Estimate				
PROJECT:		Downtown Streetscape Project																
Task Description	Hours	Estimated Person Hours Required												Stockwell Totals			Sub-consultants	
		Michl Mergan	Gabriel Rota	Jon Flacher	David Locke	Arnie Dornoff	Walter Spillman	Jose Willlock	Chad Ruff	Logan Herzog	Mike Seiner	Kalle Lee	Expenses	Hours	Fee	Website Designer	Electrical Engineer	Structural Engineer
Project Initiation	4				\$169.20	\$104.60	\$28.10	\$171.70	\$119.30	\$96.90	\$119.30	\$83.10	\$35	24	\$3,146	x	x	
Survey									60	60	50		\$3,423	170	\$21,760	x	x	
Design Charter					80		106					20	\$105	206	\$23,022			
Schematic Design	10		20	10	60	40	20				40	2	\$525	202	\$28,731			
Design Development	20		44	20	82	80	120				144	2	\$75	512	\$63,125			\$16,000
Construction Documents	10		62	10	56		30				90	8	\$75	266	\$37,319			
Bidding											6	10	\$75	36	\$5,015	x		
<b>Total Project Fee</b>																		<b>\$238,318</b>



20054 - Survey final.dwg



NIS

# Survey Limits Downtown Streetscape Project



**STOCKWELL**  
3/18/2020 SEI No: 20054

City of  
Vermillion



## Schedule of Billing Rates

Effective January 1, 2020

Principal	\$236.00 per hour
Engineer VIII	\$223.80 per hour
Engineer VII	\$177.10 per hour
Engineer VI	\$166.50 per hour
Engineer V	\$156.20 per hour
Engineer IV	\$152.30 per hour
Engineer III	\$148.20 per hour
Engineer II	\$137.90 per hour
Engineer I	\$130.40 per hour
Engineer/Technology Student	\$61.70 per hour
Water System Advisor	\$150.00 per hour
Land Surveyor VII	\$171.70 per hour
Land Surveyor VI	\$163.40 per hour
Land Surveyor V	\$147.10 per hour
Land Surveyor IV	\$130.90 per hour
Land Surveyor III	\$125.10 per hour
Land Surveyor II	\$119.60 per hour
Land Surveyor I	\$108.00 per hour
Landscape Architect VI	\$162.20 per hour
Landscape Architect V	\$152.10 per hour
Landscape Architect IV	\$142.20 per hour
Landscape Architect III	\$132.30 per hour
Landscape Architect II	\$104.60 per hour
Landscape Architect I	\$98.10 per hour
Landscape Designer	\$78.10 per hour
Construction Manager II	\$148.00 per hour
Construction Manager I	\$137.50 per hour
Construction Inspector II	\$120.90 per hour
Construction Inspector I	\$111.10 per hour
Technician VI	\$127.00 per hour
Technician V	\$119.30 per hour
Technician IV	\$108.00 per hour
Technician III	\$98.10 per hour
Technician II	\$92.50 per hour
Technician I	\$86.90 per hour
Administration IV	\$98.20 per hour
Administration III	\$90.70 per hour
Administration II	\$83.10 per hour
Administration I	\$75.60 per hour
Electronic Survey Equipment	\$51.30 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. Owner's Responsibilities

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

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

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

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

### D. Miscellaneous Provisions.

#### 1.0 Insurance/Indemnification/Risk Allocation

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

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

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

- (c) Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of Stockwell with limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate.
- (d) Professional liability insurance of \$1,000,000 per occurrence and in the aggregate.

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

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

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

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

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

**2.0 Documents.** Notwithstanding the foregoing, all computer programs, work product, inventions, patents, copyrights, software, and other like data developed during the course of the Project, are and will remain Stockwell's sole property.

Stockwell's liability to Client for any errors or omissions is limited solely to the correction of residual errors, minor maintenance, or updates as needed.

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

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

as amended, or within any state statute governing the generation, treatment, storage, and disposal of waste.

- 3.0 Injury to Workers on Project.** Client agrees Stockwell will be named an Additional Insured on construction contractors' insurance policy for commercial general liability insurance, and Client agrees to insert into all contracts for construction between Client and construction contractors a provision requiring the construction contractors to defend, indemnify and hold harmless both Client and Stockwell from any and all actions arising out of the construction Project, including, but not limited to, injury to or death of any worker on the job site, not caused by the sole negligence of Client or Stockwell.
- 4.0 Probable Construction Cost Opinions.** Any opinion of probable construction costs for the Project considered and designed under this Agreement will be prepared by Stockwell through the exercise of its experience and judgment in applying presently available cost data, but it is recognized Stockwell has no control over the cost of labor and materials, the construction contractors' methods of determining prices, competitive bidding procedures, market conditions, and unknown field conditions. Stockwell cannot and does not guarantee proposals, bids, or the Project construction costs will not vary from Stockwell's opinion of probable construction costs.
- 5.0 Site Visits.** Visits to the construction site and observations made by Stockwell as part of the Services during construction under this Agreement will not make Stockwell responsible for, nor relieve the construction contractors of the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the contract documents, will not make Stockwell responsible for, nor relieve the construction contractors of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing portions of the work under the construction contracts, and will not relieve the construction contractors of the obligation to provide all safety precautions incidental thereto. Such visits by Stockwell are not to be construed as part of Stockwell's observation duties of the Project site.
- 6.0 On-Site Observation.** When Stockwell provides on-site observation personnel as part of the Services during construction, the on-site observation personnel will make reasonable efforts to advise Client of observed defects and deficiencies in the contractors' work, and to help determine if the provisions of the Contract Documents are being fulfilled. Their day-to-day observation will not, however, cause Stockwell to be responsible for those duties and responsibilities which belong to the construction contractors, including, but not limited to, full responsibility for the means, methods, techniques, sequences, and progress of construction, and the safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents.
- 7.0 Right of Entry.** Client must provide for entry to the Project site for Stockwell's agents, employees, contractors and consultants and for all necessary equipment.
- 8.0 Termination.** Either party may, by thirty (30) days written notice to the other, terminate this agreement in whole or part at any time. Upon receipt of notice, a party shall immediately discontinue all services affected, unless the notice directs otherwise. If the termination is for the convenience of the Client, no amount shall be allowed for Stockwell for unperformed service, but Stockwell shall be compensated for services rendered through the date of termination notice.
- 9.0 Default and Remedies.**  
**9.1 Client's Default.** If Client breaches any of the terms of this Agreement, Stockwell, in addition to other rights set forth in **Section 1.3** above, will give Client written notice of default setting forth the default. If Client has not remedied the default within 7 days of the date of default, Stockwell may terminate this Agreement and proceed with any or all remedies provided under applicable law.  
**9.2 Stockwell's Default.** If Stockwell breaches any of the terms of this Agreement, Client will give Stockwell written notice of default setting forth the default. If Stockwell has not remedied the default within 7 days of the date of default, Client may terminate this Agreement and proceed with any or all remedies provided under applicable law.
- 10.0 Jurisdiction.** This Agreement is governed by the laws of the State of South Dakota and any action at law or other judicial proceeding arising from this Agreement must be instituted only in Minnehaha County Circuit Court, Sioux Falls, South Dakota, and may not be removed to federal district court, nor may venue be changed to any other circuit court.
- 11.0 Waiver.** Stockwell's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, will not constitute a waiver of any other term, condition, or covenant, or the breach thereof.
- 12.0 Entire Agreement.** This Agreement, and its attachments, constitutes the entire understanding between Client and Stockwell relating to services to be provided by Stockwell and supersedes any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein. Subsequent modifications or amendments to this Agreement must be in writing and signed by the parties to this Agreement. The

foregoing notwithstanding, if Client, its agents, officers, directors, employees, contractors and consultants request Stockwell perform extra Services pursuant to this Agreement, Client must pay for the additional Services even though an additional written agreement is not issued or signed.

- 13.0 Successors and Assigns.** All of the terms, conditions and provisions of this Agreement will include and be for the benefit of and be binding upon the parties and their respective successors and assigns; provided, however, no assignment of this Agreement may be made without written consent of the other party to this Agreement.
- 14.0 Severability.** If any provision of this Agreement is declared invalid, illegal or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Agreement will nevertheless continue in full force and effect, and no provision will be deemed dependent upon any other provision unless so expressed herein.
- 15.0 Force Majeure.** Stockwell will not be liable to Client for delays in performing its obligations, or for the direct or indirect cost resulting from delays that may result from acts of nature, governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond Stockwell's reasonable control. Each party will take reasonable steps to mitigate the impact of any force majeure event. Stockwell will be entitled to an adjustment to the schedule and its compensation under this Agreement to the extent required by the force majeure event.
- 16.0 Underground Utilities.** If included as a Service under this Agreement, Stockwell or its authorized consultant will conduct research in Stockwell's or the consultant's professional opinion is necessary, and will prepare a plan indicating the locations intended for subsurface penetrations with respect to assumed locations of underground improvements. These Services will be performed in a manner consistent with the ordinary standard of care. Client recognizes the research may not identify all underground improvements or their locations, and the information upon which Stockwell and the consultant rely may contain errors or may not be complete. Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless Stockwell and its agents, officers, directors, contractors and consultants from all liability (including reasonable attorneys' fees and court costs) of Client, its contractors or all other persons for delay or additional compensation relating to the identification, removal, relocation, or restoration of utilities, or damages to underground improvements resulting from subsurface penetration locations established by Stockwell.