



STOCKWELL ENGINEERS, INC.

AGREEMENT FOR PROFESSIONAL SERVICES

Project: Municipal Engineering Services

Stockwell Project No.: F1904

This Agreement for Professional Services (hereinafter "Agreement") is made and entered into this 12th day of December 2018, by and between **STOCKWELL ENGINEERS, INC.**, 801 North Phillips Avenue, Suite 100, Sioux Falls, SD 57104, (hereinafter "Engineer") and **CITY OF HARRISBURG**, (hereinafter "Client"), for the services described under the Scope of Services (the "Services").

CLIENT: City of Harrisburg

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

Phone No. (605) 743-5872

Fax No. (605) 743-2831

Scope of Services: Client hereby agrees to retain Engineer to perform the Services as outlined in the attached *Proposal for Professional Services* dated December 12, 2018. In general, the Project consists of providing engineering services as requested by the Client (the "Project").

Schedule: Services shall be performed according to the schedule outlined in the attached *Proposal for Professional Services* dated December 12, 2018. The period of service for the Project will be five years ending December 31, 2023.

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

Basic Compensation: Hourly time and materials with an annual budget as outlined in the proposal.

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: _____

December 12, 2018

Via email
Mr. Andrew Pietrus
City of Harrisburg
andrew.pietrus@harrisburgsd.gov

Re: Proposal for Professional Services
Period of 2019-2023

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

Acknowledgments

Whereas Client is desirous of retaining engineering services from Stockwell and both parties are desirous of working with each other. Now, therefore, the parties do hereby contract and agree as follows:

Stockwell agrees to provide "Force Account" services requested by the Client as outlined in this agreement's Scope of Work and in providing those services, agrees to work with the Client and will not engage in other work within the Client's municipal limits without written consent from the Client; and

Client agrees to contract separately with Stockwell for all engineering services as they relate to capital improvement projects throughout the duration of this agreement. Those services include but are not limited to the following:

- Wastewater collection and treatment design.
- Water distribution, storage and treatment design.
- Street, highway and parking lot design.
- Drainage analysis and design.
- Feasibility analysis and life cycle comparisons.
- Rail design.
- Development site planning and design.
- Recreation field and park system analysis, planning and design.
- Landscape analysis and design.
- Topographic, boundary and legal surveys.
- Hydrographic surveys.
- Construction inspection and staking.

Scope of Services

1.0 Municipal Engineering Services "Force Account"

- 1.1 In general, the Project consists of providing engineering services as requested by the Client (the "Project"). Possible services may include, but not limited to:
 - 1.1.1 Preparation of "Engineer's Estimate" of probable construction costs.
 - 1.1.2 General planning items.
 - 1.1.3 Review of plat.
 - 1.1.4 Topographic survey.
 - 1.1.5 Inspection of developer paid construction project.
 - 1.1.6 Preparation of exhibits.
 - 1.1.7 Update of city maps.
 - 1.1.8 Meeting with Client staff.
- 1.2 Assist new City Staff Engineer.
 - 1.2.1 With municipal needs to the extent requested.
 - 1.2.2 Provide cubical space at Stockwell office to train/educate.
- 1.3 All work associated with the Project will be limited to the hourly not to exceed annual budget. Notify Client if budget is met prior to the end of each calendar year so Client may provide Engineer direction for proceeding.

2.0 Period of Service

- 2.1 The period of service for the Project will be five years ending December 31, 2023.
- 2.2 It is specifically understood and agreed by the parties that this Agreement is binding upon the Client if, and only if, each year's financial obligations are approved and authorized by the Client's governing body then holding office. If at any time during the term of this Agreement, the governing body of the Client shall fail or refuse to approve the funds due hereunder for the following municipal fiscal year, then this Agreement shall terminate upon the end of the fiscal year for which funds were approved and authorized. Such termination shall be without penalty to the Client.

3.0 Compensation

- 3.1 Compensation for Force Account services provided by Stockwell pursuant to this Proposal will be on an **hourly time and materials basis with an annual budget as outlined below**. 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. The payment to Stockwell is inclusive of any use, excise, income, or any other tax arising out of this Agreement.

3.1.1	Calendar year 2019	\$120,000.00
3.1.2	Calendar year 2020	\$100,000.00
3.1.3	Calendar year 2021	\$80,000.00
3.1.4	Calendar year 2022	\$80,000.00
3.1.5	Calendar year 2023	\$80,000.00

- 3.2 Capital Project services will be negotiated independently of Force Account. Capital project agreements will provide a detailed anticipated scope of work with fees to be determined based on scope.
- 3.3 Stockwell operates an independent business and is contracted to do work according to its own methods, without being subject to the control of the Client, except as to the project or the result of the work. The relationship between the City and Stockwell shall be that as between an independent contractor and not as an employer-employee relationship.
- 3.4 The level of effort required of Stockwell to accomplish the services described in this Proposal may be affected by factors beyond Stockwell's control. Therefore, if it appears at any time compensation for services rendered will exceed the maximum compensation amount, Stockwell and Client agree Stockwell will not perform additional services or be entitled to additional compensation in excess of the maximum compensation amount until Stockwell and Client have agreed upon additional compensation for services to be rendered and Client has available funds to pay for Stockwell's services.

Sincerely,

STOCKWELL ENGINEERS, INC.



Jon Brown, P.E.

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 Intern	\$107.10 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. Owner's Responsibilities.

- 1.0 **Client to Provide Information.** Unless otherwise provided for under this Agreement, Client will provide information in a timely manner regarding requirements for and limitations on the Project, including Client's Program objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from Stockwell, Client must furnish the requested information as necessary and relevant for Stockwell to evaluate, give notice of or enforce lien rights.
- 2.0 **Client to Provide Contractors.** Client will furnish the services of a contractor who along with Client will be responsible for creating the overall Project Schedule. Client will adjust the Project Schedule, if necessary, as the Project proceeds.
- 3.0 **Client to Provide Representative.** Client will identify a representative authorized to act on Client's behalf with respect to the Project. Client will render decisions and approve Stockwell's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Stockwell's Services.
- 4.0 **Client to Provide Notice.** Client will provide to Stockwell prompt written notice if Client becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in Stockwell's instruments of service.

D. Miscellaneous Provisions.

1.0 Insurance/Indemnification/Risk Allocation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 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.