

**SE-240
SMALL PROFESSIONAL SERVICES CONTRACT FOR CONSTRUCTION
PROJECTS**

AGENCY: SC Office of Resilience

PROJECT NAME: McKeithan Watershed Stormwater Improvements

PROJECT NUMBER: D30-N031-MJ

A/E NAME: Bolton & Menk, LLC

ADDRESS: 1298 Professional Drive,
Myrtle Beach, SC 29577

In consideration of the mutual covenants and obligations set forth herein, the Agency and A/E (hereinafter jointly referred to as the "parties") agree to the following:

A. CONTRACT DOCUMENTS

1. Documents forming a part of this contract are, in order of precedence:
 - a. This Contract, SE-240.
 - b. A/E Proposal describing services to be provided for this project, the associated hourly billing rates for the A/E and the A/E consultants, and the projected Reimbursable items.
 - c. Supplemental Conditions, attached if applicable.
 - d. The following other documents:

2. The contract is the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, whether written or oral.
3. The Agency's Budget for the Cost of the Work: \$2,065,125.00

The Cost of the Work shall be the total cost to the Agency to construct all elements of the Project designed or specified by the A/E and shall include Contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Agency. The Cost of the Work does not include the compensation of the A/E, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, or other costs that are the responsibility of the Agency.

B. REPRESENTATIVES

1. Agency's Representatives

Agency designates the individual listed below as its Representative, which individual shall have the authority to bind the Agency with respect to all matters regarding the Contract and requiring the Agency's approval or authorization:

NAME: Eric Fosmire

TITLE: Chief of Staff & General Counsel

ADDRESS: 632 Rosewood Dr Columbia, SC 29201

TELEPHONE: (803)822-9580

EMAIL: eric.fosmire@scor.gov

The term "Agency" means the Agency or the Agency's Representative.

2. A/E's Representatives

A/E designates the individual listed below as its A/E's Representative, which individual shall have the authority to bind the A/E with respect to all matters regarding the Contract and requiring the A/E's approval or authorization:

NAME: Dylan Jordan

TITLE: Associate Project Engineer

ADDRESS: 1298 Professional Drive, Myrtle Beach, SC 29577

TELEPHONE: 843-692-3200

EMAIL: Dylan.Jordan@Bolton-Menk.com

The term "A/E" means the A/E or the A/E's Representative.

3. Neither the Agency nor the A/E shall change their representatives without ten days written notice to the other party.

C. A/E RESPONSIBILITIES

1. The A/E shall provide professional services as set forth in this Contract consistent with the professional skill and care ordinarily provided by A/E's practicing in the same or similar locality region under the same or similar circumstances.
2. The A/E represents that its' team is properly licensed in the jurisdiction where the Project is located to provide the services required.

D. INSURANCE

1. The A/E shall procure and maintain in effect during the term of this Contract the insurance coverages described below, which insurance shall be placed with insurance companies authorized to do business in the State of South Carolina and rated A minus VII or better by the current edition of Best's Key Rating Guide or otherwise approved by the Agency.
 - a. Professional Liability Insurance with limits of not less than \$1,000,000 per claim and in the aggregate. A/E shall maintain this coverage in effect during the term of this Contract and for five (5) years after the date of completion of services provided under this Contract. A/E shall give prompt written notice to Agency of all claims made against this policy during the period in which this policy is required to be maintained.
 - b. Worker's Compensation Insurance as required by the State of South Carolina with statutory limits.
 - c. Employers' Liability Insurance with limit of no less than \$1,000,000 per accident.
 - d. Automobile Liability Insurance: Insurance Services Offices (ISO) Form CA 00 01 covering Code 1 (any auto), or if A/E has no owned automobiles, Code 8 (hired) and Code 9 (non-owned), with limits not less than \$1,000,000 per accident for bodily injury and property damage.
 - e. Commercial General Liability Insurance (CGL): ISO Form CG 00 01 12 07 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury, and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the required occurrence limit. This Contract shall be considered to be an "insured contract" as defined in the policy.
2. The A/E agrees to require Consultants to comply with the insurance provisions required of A/E pursuant to this Contract unless A/E and Agency mutually agree to modify these requirements for Consultants whose work is of relatively small scope. The A/E agrees that it will contractually obligate its Consultants to advise A/E promptly of any changes or lapses of the requisite insurance coverages and A/E agrees to promptly advise Agency of any such notices A/E receives from its Consultants. The A/E agrees that it will contractually obligate its Consultants to indemnify and hold harmless the Agency to the same extent that the A/E is required to do so as provided in this Contract.
3. The A/E shall provide certificates of insurance to the Agency that evidence compliance with the requirements in this Section.
4. Additional Insured Obligations
 - a. To the fullest extent permitted by law, the A/E shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Agency, its officers, officials, employees, and volunteers, as additional insureds for claims caused in whole or in part by the A/E's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Agency's insurance policies and shall apply to both ongoing and completed operations.
 - b. Prior to performing services, and thereafter upon replacement of each required policy of insurance, the A/E shall provide to the Agency a written endorsement to the A/E's General Liability Insurance policy that (i) names the Agency, its officers, officials, employees, and volunteers, as additional insureds, and (ii) states that coverage shall not be cancelled, except with notice to the Agency.
 - c. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the A/E with reasonable promptness.

E. INDEMNIFICATION

1. Without limitation and notwithstanding any provision in this Contract, the A/E shall indemnify and hold harmless the Indemnitees for and against claims, damages, losses and expenses (including attorneys' fees) asserted by a third party against an Indemnitee arising out of or resulting from negligent acts or omissions of the A/E, a consultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself). The A/E shall not be required to indemnify an Indemnitee to the extent the Indemnitee's damages result from the Agency's own negligence.

2. Such obligation shall not be construed to negate, abridge, or reduce any other rights, including any other obligations of indemnity, which would otherwise exist as to a party or person described in this Section As used in this paragraph, "Indemnitees" means the State (including its instrumentalities, agencies, departments, boards, and political subdivisions), the contractor, the subcontractors at all tiers, and the officers, agents and employees of all the forgoing.

F. A/E SERVICES

1. The A/E shall be fully responsible for coordinating all services under this Contract regardless of whether performed by its own employees or by consultants hired by A/E to perform a portion of its' services.
2. The A/E shall be responsible to Agency for the services furnished to A/E by any Consultant to the same extent as if A/E had furnished the service itself. A/E also agrees to coordinate and resolve any inconsistencies in its work and the work of its Consultants. All of A/E's contracts with Consultants shall be in writing, signed by both parties, and shall include the following provision: "The Agency is intended to be a third-party beneficiary of this Contract."
3. In the performance of its duties under this Contract, the A/E shall comply with the requirements of Chapter 5 of the Manual for Planning and Execution of State Permanent Improvement Projects (the "Manual").
4. The A/E shall prepare and distribute conference memoranda, meeting minutes, summaries of telephone conversations, documentation of site visits and inspection reports as required by the Agency to maintain a comprehensive record of the Project. The State Project Number and Name shall be shown on all documents.
5. Any reference in the Contract Documents to the A/E taking action or rendering a decision with a "reasonable time" or "reasonable promptness" is understood to mean no more than ten (10) days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.
6. Construction Documents
 - a. The A/E shall submit to the Agency and OSE for review and approval, properly completed documents in the number and form requested, additional documentation required by the Design Documents Transmittal Form and an estimate of the Cost of the Work with each submittal. The A/E shall advise the Agency of any adjustments to the estimate of the Cost of the Work and request the OSE and Agency's approval.
 - b. Based on the Agency's approval of design documents, OSE's comments, if any, and on the Agency's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the A/E shall prepare Construction Documents for the Agency's approval. The Construction Documents shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work.
 - c. The Agency and OSE review and approval of each submittal and all documents or other matters required herein shall not relieve the A/E of their professional duty of care in the preparation of the Instruments of Service for compliance with the requirements of applicable statutes, regulations, codes, the Manual, or for design deficiencies, omission, or errors.
7. Construction Phase Services
 - a. The A/E shall provide administration of the Contract between the Agency and the Contractor as set forth in the General Conditions of the Contract for Construction.
 - b. The A/E shall advise and consult with the Agency during the Construction Phase Services. The A/E shall be responsible for the A/E's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.
 - c. The A/E's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates twenty-one (21) days after the A/E issues the final Certificate for Payment.
 - d. The A/E shall visit the site at intervals appropriate to the stage of construction to determine, in general, if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The A/E shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The A/E shall submit a written report to the Agency, and promptly report to the Agency (1) deviations from the Contract Documents, (2) deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies in the Work.
 - e. The A/E has the authority to reject Work that does not conform to the Contract Documents. Whenever the A/E considers it necessary or advisable, the A/E shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether the Work is fabricated, installed or completed.
8. Contractor Certificates for Payment
 - a. The A/E shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The A/E's certification for payment shall constitute a representation to the Agency, based on the A/E's evaluation of the Work and on the data comprising the Contractor's Application for Payment, that, to the best of the A/E's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

- b. The issuance of a Certificate for Payment shall not be a representation that the A/E has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Agency to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
9. Contractor Submittals
- a. The A/E's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness.
 - b. The A/E shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
 - c. The A/E shall review and respond to requests for information about the Contract Documents. The A/E's response to such requests shall be made in writing with reasonable promptness. If appropriate, the A/E shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.
10. Changes in the Work
- a. The A/E may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time.
 - b. The A/E shall prepare Change Orders and Construction Change Directives, with supporting technical data and cost documentation supplied by the Contractor, for the Agency's approval and execution in accordance with the Contract Documents.
11. Project Completion
- a. As required by the project, the A/E shall:
 - i. conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
 - ii. issue Certificates of Substantial Completion;
 - iii. forward to the Agency, for the Agency's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
 - iv. issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the A/E's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.
 - b. The A/E and the A/E's consultants and engineers shall conduct one Substantial Completion Inspection and one Final Completion Inspection. If additional inspections are required, payment to the A/E may be adjusted.
 - c. When Substantial Completion has been achieved, the A/E shall inform the Agency about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.
12. Additional Services
- a. The A/E may provide Additional Services after execution of this Contract without invalidating the Contract. Except for services required due to the fault of the A/E, any Additional Services provided shall entitle the A/E to compensation pursuant to negotiations and an appropriate adjustment in the A/E's schedule.
 - b. The A/E shall not proceed to provide Additional Services until the A/E receives the Agency's written authorization.

G. AGENCY'S RESPONSIBILITIES

1. The Agency shall establish the Agency's budget for the Project, including (1) the budget for the Cost of the Work; (2) the Agency's other costs; and, (3) reasonable contingencies related to these costs. The Agency shall update the Agency's budget for the Project as necessary throughout the duration of the Project until final completion. If the Agency significantly increases or decreases the Agency's budget for the Cost of the Work, the Agency shall notify the A/E of such change and of any corresponding changes in the Project's scope and quality.
2. The Agency shall review the A/E's documents and the estimate of Cost of the Work and shall submit its written approval to the A/E and OSE, if required.
3. The Agency shall provide prompt written notice to the A/E if the Agency becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the A/E's Instruments of Service.
4. The Agency shall include the A/E in all communications with the Contractor that relate to or affect the A/E's services or professional responsibilities. Communications by and with the A/E's consultants shall be through the A/E.

H. COST OF THE WORK

1. The Agency's budget for the Cost of the Work may be adjusted throughout the Project. It is recognized, that neither the A/E nor the Agency has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the A/E cannot and does not warrant or represent that bids or negotiated prices will not vary from the Agency's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the A/E.
2. If at any time the A/E's estimate of the Cost of the Work exceeds the Agency's budget for the Cost of the Work, the A/E shall, at no additional cost, make appropriate recommendations to the Agency to adjust the Project's size, quality, or budget for the Cost of the Work, and the Agency shall cooperate with the A/E in making such adjustments.
3. If the Agency's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid, the Agency may:
 - a. if and as permitted by applicable law, give written approval of an increase in the budget for the Cost of the Work and award the contract within the revised budget;
 - b. cancel the invitation for bids and reissue it, without change in the Project program, scope, or quality, not less than ninety (90) days after the date bids were opened;
 - c. cancel the invitation for bids and terminate this Contract in accordance with Section K;
 - d. cancel the invitation for bids; in consultation with the A/E, revise the Project program, scope, or quality as required to reduce the Cost of the Work and reissue the invitation for bids with Construction Documents so revised; or,
 - e. negotiate a contract with the lowest responsive and responsible bidder pursuant to S.C. Code Ann. § 11-35-3020(d).
4. If the Agency chooses to proceed under Section H.3.a or H.3.b, the A/E shall not receive additional compensation for the increase in budget or delay in rebidding.
5. If the lowest bona fide bid exceeds the Agency's budget for the Cost of the Work by more than ten (10) percent and Agency chooses to proceed under Section H.3.d, the A/E shall modify the Construction Documents as necessary to comply with the Agency's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or as adjusted. If the Agency requires the A/E to modify the Construction Documents because the lowest bona fide bid exceeds the Agency's budget for the Cost of the Work due to market conditions the A/E could not reasonably anticipate, the Agency shall compensate the A/E for the modifications as an Additional Service; otherwise the A/E's services for modifying the Construction Documents shall be without additional compensation and the A/E shall be responsible for all its costs associated with the redesign and rebidding of the Project, including the reproduction of revised documents and fees for any new or revised permits based on the revised plans. In any event, the A/E's modification of the Construction Documents shall be the limit of the A/E's responsibility under this Section.
6. If the lowest bona fide bid exceeds the Agency's budget for the Cost of the Work by less than ten (10) percent, and the Agency chooses to proceed under Section H.3.e, the A/E shall, without additional charge to the Agency, assist in negotiations to reduce the bid to an amount within the Agency's budget for the Cost of the Work, but not more than 10% below the Agency's budget for the Cost of the Work. In such case, the A/E shall not be entitled to additional compensation for any effort or additional work necessary to bring the contract within the Agency's budget for the Cost of the Work.

I. INSTRUMENTS OF SERVICE

1. The A/E and the A/E's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the A/E and the A/E's consultants.
2. The A/E grants to the Agency a perpetual, irrevocable, non-exclusive license to use and authorize others to use, at any time and in any manner, the A/E's Instruments of Service for purposes including, but not limited to, of constructing, using, maintaining, altering and adding to the structures which are the subject of the Instruments of Service at the general location of the site of Project, and for any other use required by law. The A/E shall obtain and provide to the Agency licenses from the A/E's consultants that have terms identical to those that obligate the A/E to the Agency as expressed above in this Section.
3. In the event the Agency uses the Instruments of Service without retaining the authors of the Instruments of Service, the Agency releases the A/E and A/E's consultant(s) from all claims and causes of action arising from such uses. The Agency, to the extent permitted by law, further agrees to waive any claims against the A/E and its consultants for all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Agency's use of the Instruments of Service under this Section. The terms of this Section shall not apply if the Agency rightfully terminates this Contract for cause.

J. CLAIMS AND DISPUTE RESOLUTION

1. Both parties shall attempt to resolve disputes through good faith negotiations.
2. All disputes, claims, or controversies relating to the Contract, that cannot be resolved through good faith negotiations between the parties shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. A/E agrees that any act by the State regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, the phrase, "the State" includes the Agency and the State Fiscal Accountability Authority
3. A/E consents that any papers, notices, or process necessary or proper for the initiation or continuation of any claims or controversies relating to the Contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on A/E by certified mail (return receipt requested) addressed to A/E at the address provided for the A/E's Representative or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed delivered three (3) business days after deposit, postage prepaid, in the United States mail.
4. The A/E and Agency waive claims against each other for listed damages arising out of or relating to this Contract.
 - a. For the Agency, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) costs suffered by a third party unable to commence work, (vi) attorney's fees, (vii) any interest, except to the extent allowed by Section M.6, (viii) lost revenue and profit lost use of the property, (ix) costs resulting from lost productivity or efficiency.
 - b. For the A/E, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) attorney's fees, (vi) any interest, except to the extent allowed by Section M.6, (vii) unamortized equipment costs; and (viii) losses incurred by the A/E's consultants for the types of damages the A/E has waived as against the Agency.
5. The A/E waives all claims against the Contractor and any of the Contractor's subcontractors (at any tier) for listed damages arising out of or relating to this Contract. The listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) attorney's fees, (vi) interest, (vii) unamortized equipment costs; and (viii) losses incurred by the A/E's consultants for the types of damages the A/E has waived as against the Contractor. This mutual waiver is not applicable to amounts due or obligations under Section E (Indemnification).
6. Continuation of Work: Pending resolution of a claim or dispute, the A/E shall proceed diligently with the performance of its services under this Contract, and Agency shall continue to make payments in accordance with this Contract for all services rendered by A/E which are not the subject of the claim or dispute.

K. TERMINATION OR SUSPENSION

1. Agency Right of Suspension:
 - a. The Agency may, at any time, suspend the work, in whole or in part, by written notice to the A/E with or without cause for such period of time as determined by the Agency. The A/E shall be compensated for services performed prior to notice of such suspension, except in the event of suspension due to a default of the A/E.
 - b. When the Work, in whole or in part, is resumed, the remaining amount payable to the A/E may be equitably adjusted to reflect reasonable costs actually incurred by the A/E due to delay or interruption resulting from such suspension.
 - c. If the suspension exceeds ninety (90) consecutive days, the A/E's fees for the remaining services and the time schedules shall be equitably adjusted.
2. Agency Right of Termination:
 - a. Termination for Cause: If the A/E defaults, persistently fails or neglects to perform the services in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Agency shall provide written notice of such default, failure, or neglect to the A/E. If the A/E fails to cure such default, failure, or neglect within ten (10) days from receipt of the Agency's notice, the Agency may, without prejudice to any other right or remedy the Agency may have, terminate the Contract.
 - b. Termination for Convenience: The Agency may, for its convenience, terminate all or any portion of the work or terminate this Contract by ten (10) days written notice stating the effective date of the termination. Thereafter, the Agency shall pay the A/E for those services actually performed before the date of termination. No payments shall be made for services not actually performed, and no payment shall be made or due for lost profits for portions of the services not actually performed.

3. A/E Right of Termination:

- a. The A/E may terminate the contract if work is stopped through no fault of the A/E, or other persons performing work either directly or indirectly for the A/E, for a period of time exceeding sixty (60) consecutive calendar days due to a court order or other public authority having jurisdiction; or a declared National emergency which requires the work to be stopped.
 - b. **Agency Failure to Make Payment:** Subject to the Agency's right to withhold payments pursuant to Section M, if the Agency fails to make payments to the A/E as set forth in Section M and any other applicable provisions of the Contract Documents, the A/E may, upon fourteen (14) days prior written notice to the Agency, terminate the Contract and recover from the Agency payment for all services performed, including reasonable overhead, profit and damages applicable to the services performed through the date thereof.
4. In the event of suspension or termination for convenience, upon request of Agency and payment of all fees pursuant to this Section, A/E shall promptly provide Agency with all documents completed or in progress on the date of termination, on computer tapes or disks. The Agency's rights to use the A/E's Instruments of Service in the event of a termination of this Contract are set forth in the Contract.

L. MISCELLANEOUS PROVISIONS

1. **Governing Law:** The Contract, any dispute, claim, or controversy relating to the Contract, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules.
2. This Contract is formed pursuant to and governed by the South Carolina Consolidated Procurement Code and is deemed to incorporate all applicable provisions thereof and the ensuing regulations.
3. **Severability:** If it is determined that any provision of the Contract violates any law, or is otherwise invalid or unenforceable, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted. In such case the Contract shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.
4. **Economic Conflict of Interest:** An A/E shall not have or exercise any official responsibility regarding a public contract in which the A/E, or a business with which he is associated, has an economic interest. A person working for an A/E shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If an A/E is asked by any person to violate, or does violate, either of these restrictions, the A/E shall immediately communicate such information to the procurement officer. The state may rescind, and recover any amount expended as a result of, any action taken, or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in S.C. Code Ann. § 8-13-100.
5. **Drug-Free Workplace:** The A/E must comply with the Drug-Free Workplace Act, S.C. Code Ann. §§ 44-107-10, et seq. The A/E certifies to the Agency that A/E will provide a Drug-Free Workplace, as defined by S.C. Code Ann. §§ 44-107-20(1).
6. **False Claims:** According to SC Code § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.
7. **Non-Indemnification:** It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations per S.C. Code Ann. § 11-9-20. It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year per S.C. Code Ann. § 11-1-40.
8. **Assignment:** The Agency and A/E, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Contract. Neither the Agency nor the A/E shall assign this Contract without the written consent of the other. S.C. Code Ann. Reg. 19-445.2180 provides as follows: "No State contract is transferable, or otherwise assignable, without the written consent of the Chief Procurement Officer, the head of a purchasing agency, or the designee of either; provided, however, that a contractor may assign monies receivable under a contract after due notice from the contractor to the State."
9. **Force Majeure:** In the event A/E is hindered, delayed or prevented from performing its obligations under this Contract as a result of any fire, flood, landslide, tornado or other act of God, malicious mischief, theft, strike, lockout, other labor problems, shortages of material or labor, or any other cause beyond the reasonable control of A/E, the time for completion of A/E's work shall be extended by the period of resulting delay.

10. Open Trade Representation: By signing this Contract, A/E represents that A/E is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300. During the contract term, including any renewals or extensions, A/E will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

M. COMPENSATION

1. Basic Services:

The Agency shall compensate the A/E for the services rendered as described in the Contract Documents in Section A in the amount of:

\$ 333,125.00

2. Additional Services:

The Agency shall compensate the A/E for Additional Services rendered as described in the Contract Documents in Section A in the amount of:

\$

3. Reimbursable Expenses:

For Reimbursable Expenses the compensation shall be the actual costs incurred by the A/E and the A/E's consultants. The A/E and the A/E's consultants shall be allowed a reasonable markup not to exceed 10% for administrative cost related to Reimbursable Expenses.

The Agency shall compensate the A/E for Reimbursable Expenses described in the Contract Documents in Section A as a not-to-exceed amount of:

\$

4. When any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The A/E shall be entitled to compensation in accordance with this Contract for all services performed whether or not the Construction Phase is commenced.
5. Unless authorized in writing by the Agency prior to incurring the expense, no expense for transportation, travel, or subsistence will be reimbursable to the extent the expense exceeds the amount for which a state employee would be reimbursed under the Travel Regulations. Travel Regulations means the State Fiscal Accountability Authority's Regulations for Reimbursement for Travel and Subsistence Expenses, Disbursement Regulations pdf found at [<https://cgs.sc.gov/guidance-and-forms-state-agencies/cgs-accounting-policies-and-procedures>]. There shall be no charge for time spent in travel.
6. Progress Payments: Payments for services shall be made monthly in proportion to services performed. The Agency shall make payments to the A/E of undisputed amounts due for services performed by the A/E within twenty-one (21) days of receipt of the A/E's invoice. The A/E shall make progress payments to the consultants within seven (7) days of the receipt by the A/E of each payment from the Agency. Payments due to the A/E and unpaid under this Contract shall bear interest only if and to the extent allowed by S.C. Code Ann. §§ 29-6-10 through 29-6-60. Amounts due to the A/E shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.
7. The Agency shall not withhold amounts from the A/E's compensation to impose a penalty.

AGENCY:

BY: 

(Signature of Representative)

PRINT NAME: Eric Fosmire

PRINT TITLE: Chief of Staff & General Counsel

DATE: 26 February 2024

A/E:

BY: 

(Signature of Representative)

PRINT NAME: Dylan Jordan

PRINT TITLE: Associate Project Engineer

DATE: 2/13/24



**BOLTON
& MENK**

Real People. Real Solutions.

1298 Professional Drive
Myrtle Beach, SC 29577

Ph: (843) 692-3200
Fax: (843) 692-3210
Bolton-Menk.com

October 11, 2023
Revised November 14, 2023
Revised December 04, 2023
Revised January 10, 2024

Transmitted Via Email and US Mail
Kristin.Johnson@scor.sc.gov

Ms. Kristin Johnson
Infrastructure Engineer
South Carolina Office of Resilience
632 Rosewood Drive
Columbia, South Carolina 29201

Re: **Proposal for Professional Services**
City of Conway McKeithan Watershed Stormwater Improvement Project
SCOR Project #: D30-N031-MJ

Dear Ms. Johnson:

First, thank you for selecting Bolton & Menk, LLC as your engineering consultant for the City of Conway McKeithan Watershed Stormwater Improvement project. Our highly experienced team of professionals will work diligently to provide a biddable set of construction documents in order to improve the property into a city park capable of storing 20±-acres of flood water storage for the McKeithan Watershed. Our proposed scope of services are as follows:

1. **Field Survey and Base Mapping** - Bolton & Menk will conduct a site topographic survey and boundary survey of the existing parcel in order to develop a base map to design the proposed stormwater pond/park. The field survey will be conducted utilizing Trimble robotic total stations and Trimble electronic data collecting systems which uses prisms and prism poles to perform conventional survey methods of traverse, topographic, and trigonometric leveling. The topographic survey will include contours at one-foot intervals. This site survey will entail finding all the appurtenances located within the property to determine all the site constraints prior to design. Bolton & Menk has partnered with S&ME for assistance with any necessary geotechnical exploration needs. S&ME will provide pavement recommendations on any/all parking areas, provide percolation tests for areas subject to pervious pavers/concrete, and will collect test pit samples to provide information on the value of the sites borrow fill. One infiltration test will be performed either in the proposed parking lot or roadway area. Based upon the size of the site and the surface conditions, S&ME estimates that approximately 7 to 10 test pits will be needed to gather pertinent site information.
2. **Wetland Assessment** - Bolton & Menk has partnered with The Brigman Company to complete the wetland assessment of the property. The Brigman Company already completed a wetland delineation of the site in 2022. The original assessment will be used and updated as necessary. The Brigman Company will revisit the site to review the previous delineation and collect new determination data. They will then submit the wetland determination information and will assist with any applicable or necessary Army Corps permits.



3. **Preliminary Engineering Design and Planning** - Bolton & Menk will begin preliminary design efforts while considering all items as laid out in the Request for Qualifications and interview presentation. Bolton & Menk will begin by meeting with SCOR and the City of Conway to review the total construction budget for the project.

Bolton & Menk will use the budget to estimate which components of the project are most valuable and useful. These factors will be considered when designing the final product. If it becomes known that the funds available will not realistically be enough for construction of all components as laid out in the Request for Qualifications and the project interview, Bolton & Menk will reevaluate their scope of work and adjust accordingly. Different design alternatives will be used and considered to keep the project on track with the available funds. Bolton & Menk will engage in planning efforts to continue to build upon the conceptual design while incorporating engineering designs into the pond layout and stormwater BMP's. Bolton & Menk will submit conceptual plans and cost estimates at 30% and 60% complete. The preliminary plans will include but may not be limited to the storm structures and types, reference points on the drawings, detailed plan view layouts, and hardscape plans including sidewalks and crosswalks. If instructed by SCOR and the City of Conway, Bolton & Menk will also explore the idea of including a pedestrian bridge as part of the project to connect across Crabtree. Bolton & Menk will not design the bridge, but instead will partner with a prefabricated, pre-engineered bridge manufacturer. Bolton & Menk will coordinate the bridge design and will include the layout in the plans. Bolton & Menk will respond to one round of comments on the preliminary sets from SCOR and the City of Conway. The 60% set of plans will include comments and revisions from the 30% set. Bolton & Menk will verify accuracy and completion of all ICPR models provided by the City of Conway from previous engineer. Bolton & Menk will then begin to incorporate the proposed site design into the ICPR4 model and will update as the project progresses, until a final model and report are completed. The modeling and layout will work hand in hand to verify that the proposed plan is suitable for the City's needs and that it is the best option possible for the site.

4. **Public Engagement** - During this phase Bolton & Menk will also be actively engaged with the public through a minimum of two public information meetings and a maximum of three. Bolton & Menk will assist in setting up and hosting these meetings. Bolton & Menk will provide approximately five signs and posters for the public meetings. Bolton & Menk will also provide handouts/leave behinds for the public. The information gathered during these outreach opportunities will be used and considered in finalizing the engineering plans.
5. **NEPA Study** - Bolton & Menk proposes to complete an Environmental Assessment (EA) of the area affected by any and all construction activities associated with this project. The individual filed and/or records research activities which are proposed are as follows:
- o Cultural Resources Background Research
 - o (Archaeological and Historic Resources Review of Public Record)
 - o Wetland Assessment
 - Conduct data synthesis and analysis to develop a sampling plan.
 - Execute sampling plan to determine existence and limits of wetlands with study area.
 - Prepare mapping of findings.





- **Biological Evaluation**
 - Review of the available public records from USFWS & SCDNR for species listed for Horry County.
 - Conduct site reconnaissance to determine the presence/absence of federally listed protected species as well as potential habitat to support those species listed for Horry County.
 - Prepare a report documenting our observations/conclusions. The report will be submitted to the client for review and to the USFWS for concurrence if authorized by the client.
 - **Phase 1 ESA (3 Separate Reports)**
 - Conduct site reconnaissance to determine recognized environmental conditions under ASTM 1527-13.
 - Conduct review of all available federal/state/local records pertaining to the environmental conditions.
 - Prepare environmental review report, inclusive of maps, photos, and findings for review and use of client.
 - Preparation of final report will include a project narrative addressing the project scope, level of review justification, finding of no impact, etc. based on the ASIP NEPA guidance provided by SCOR along with a summary of results for the four individual studies and submit report to client for review and approval. The four individual studies include cultural resources background research, archaeological and historic resources review of public record, wetland assessment, and biological evaluation.
 - Prepare and publish a Public Notice in the local newspaper and the associated website. Bolton & Menk will provide a public notice affidavit of publication and will allow for a public comment period of 15 days while providing support for public comment review.
6. **Final Engineering Design** - Bolton & Menk will provide SCOR and the City of Conway a 90% design set and project manual for review. Bolton & Menk will respond to one round of comments during the final design period. After design review and meetings with stakeholders such as the City of Conway and South Carolina Office of Resilience, Bolton & Menk will begin to finalize the engineering design plans. As the design plans are finalized, Bolton & Menk will also finalize the H&H model. This model will include the existing conditions model, the proposed improvements model, and a 20% downstream impact analysis. During this phase Bolton & Menk will also conduct a benefit cost analysis (BCA) using the latest FEMA BCA Toolkit and provide a final construction cost estimate to the City and SCOR. Bolton & Menk will also include a landscape architecture plan in the final set of construction plans. Bolton & Menk will provide an Operations and Maintenance plan for the final design of the park and its nature-based, sustainable design practices.
7. **Regulatory Permitting** - Bolton & Menk will prepare and submit applications to the jurisdictional agencies in order to assist in the process of obtaining the permits and approvals for the project. Necessary meetings with all jurisdictional agencies will be attended by Bolton & Menk. Final review comments from the agencies will be incorporated into the construction documents. Please note that agency permit fees are not included in our proposal and will be billed out as necessary as a reimbursable expense. These fees will

Owner's <i>EST</i>	Bolton & Menk <i>[Signature]</i>
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be the responsibility of the Client. Approval for this project will require interaction with the South Carolina Department of Transportation, Army Corp of Engineers, OCRM, CZC and DHEC.

8. **Bid Documents and Bidding Assistance** - Upon receipt of approvals from the various regulatory agencies, Bolton & Menk will prepare bid documents using the Office of State Engineer (OSE) drawing and project manual requirements and will incorporate them into the contract documents for the project. Bolton & Menk will be responsible for the following tasks.
- Provide contract documentation interpretation.
 - Attendance of the pre-bid conference.
 - Receive requests for bid documents and distribute bid packages to prospective bidders (electronic is preferred).
 - Responses to Request for Information (RFI's) received.
 - Revisions and additions to drawings/specifications as required and issue addenda to all prospective bidders.
 - Attend the bid opening and make recommendations concerning the contract award.
9. **Construction Administration and Observation** - Bolton & Menk will visit the project site at intervals appropriate to the stage of construction in order to observe the progress and quality of the work completed by the Contractor. This is estimated at around three site visits per week. Assuming a 35 week construction schedule, Bolton & Menk will visit the site 105 times. If multiple Bolton & Menk employees are onsite at the same time, this will account for multiple site visits. Such visits and observations are not intended to be an exhaustive check or a detailed inspection of the Contractor's work, but rather to allow us to become generally familiar with the work in progress and to determine, in general, if the work is proceeding in accordance with the Contract Documents. Based on this general observation, Bolton & Menk will keep the Client informed about the progress of the work and shall endeavor to guard the Client against deficiencies in the work. Bolton & Menk will assist the Client with administration of the contract documents in the form of review of the Contractor's pay request within five days of receiving documents, review change order requests and make a recommendation to Client for approval/denial and provide contract document interpretation. Bolton & Menk will provide weekly construction memoranda reports. Bolton & Menk will coordinate with State and local agencies as required during the closeout process and ensure all permits are available. Bolton & Menk will attend meetings, final inspections, prepare certification documents, address comments, pick up and deliver record drawings and documents as required to expedite the final closeout of the project. No provision of this paragraph is to be interpreted as construction management of the project.

NPDES Compliance Inspections - Bolton & Menk will provide NPDES Stormwater Construction Compliance Inspections in compliance with the Stormwater Pollution Prevention Plan (SWPPP) for this project using our SCDHEC Certified Inspectors in accordance with mandatory SCDHEC requirements. Bolton & Menk will perform weekly inspections and complete written reports for drainage, sediment, and erosion control compliance in accordance with the approved project plans, specifications, and SCDHEC checklist. Bolton & Menk is required to inspect the project site until all land disturbing activities have ceased, and permanent vegetative cover or other approved measures, have been installed by the project contractor. Assuming the construction lasts for eight months, Bolton & Menk has planned for 35 NPDES inspections. The number of inspections is based solely on

Owner's 	Bolton & Menk 
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the construction timeline as it is our duty to perform such inspections at least once a week or after a major storm event. If the duration of construction is longer than the estimated eight months, Bolton & Menk reserves the right to bill for additional NPDES inspections at the \$225.00 per inspection rate.

NPDES Compliance Inspections **35 Inspections @ \$225.00 per Inspection**
Total Not-to-Exceed \$ 7,875.00

10. Project Closeout / Record Drawings - Bolton & Menk will prepare record drawings and certifications as required by State agencies when construction is satisfactorily completed for the project. Under this proposal, record drawings will be prepared for the City of Conway, SCOR, and SCDHEC/OCRM.

SCHEDULE

Work will be initiated immediately upon notice to proceed. It will be our goal to complete Items 1 and 2 within five weeks after initiation of work. The overall work schedule will closely follow the schedule as outlined in the Statement of Qualification response to the Request for Qualifications. However, that directly reflects the date on which this contract is signed and processed. It is estimated that preliminary engineering will begin in March of 2024 and will be completed in July of 2024. It is estimated that final engineering will begin in September of 2024 and will be completed in October of 2024. The Bidding process is expected to begin in November of 2024 and be completed in January of 2025. Construction is estimated to begin in March of 2025 and be completed by May of 2026. Closing out the project is estimated to begin in July of 2026 and wrap up in September of 2026.

FEE

Bolton & Menk proposes to provide the services outlined above for the City of Conway McKeithan Watershed Stormwater Improvement project for the lump sum fee of **(\$333,125.00)** invoiced monthly on a percent complete basis. A breakdown of the proposed fee, along with a rate schedule for authorized additional services, is provided.

1.	Field Survey and Base Mapping (Includes S&ME Services)	\$ 76,600.00
2.	Wetland Assessment	\$ 7,950.00
3.	Preliminary Engineering Design and Planning	\$ 31,500.00
4.	Public Engagement	\$ 13,800.00
5.	NEPA Study	\$ 24,000.00
6.	Final Engineering Design	\$ 73,000.00
7.	Regulatory Permitting	\$ 20,000.00
8.	Bid Documents and Bidding Assistance	\$ 12,200.00
9.	Construction Administration and Observation	\$ 48,900.00
10.	NPDES Compliance Inspections	\$ 7,875.00 (not-to-exceed)*
11.	Project Closeout / Record Drawings	<u>\$ 17,300.00</u>
	Subtotal:	\$333,125.00

TOTAL FEES: \$333,125.00

*Item 10. NPDES Compliance Inspections is an hourly, not-to-exceed fee.



Ms. Kristin Johnson
October 11, 2023
Revised November 14, 2023
Revised December 04, 2023
Revised January 10, 2024

Rates stay the same for the project unless circumstances are out of Bolton & Menk's control. Any change in fees shall apply only to unfinished services as of the effective date of the change. Moreover, should such a fee change occur, the South Carolina Office of Resilience shall receive written Notice thirty days prior to the change and shall be provided a brief justification to the cause of the delay of completing services provided under this Proposal. Any inquiries or challenges to the causes of delay by the South Carolina Office of Resilience shall be provided to Bolton & Menk within fifteen days of receiving the Notice and will be resolved within those thirty days prior to the increase in rate.

ADDITIONAL SERVICES

Services beyond those listed in the Scope of Services above will be provided when requested in writing by the client, on an hourly basis in keeping with the attached Rate Schedule. For those Services, which can be quantified, Bolton & Menk will provide a formal proposal when requested.

EXCLUSIONS

The following are additional services which are not included as part of this proposal, (this is not necessarily an all-inclusive list):

- SRF Funding Requirements (PER, etc.)
- Public Meetings outside of those specifically listed in the scope above.
- Production of Marketing Drawings
- Lighting Design
- Structural Design/Engineering
- Structural Bridge and/or Bridge Abutment Design
- Electric, phone, and cable utility design
- Construction layout/staking
- Regulatory application/review fees
- Architecture/MEP engineering

REIMBURSABLES EXPENSES

Reimbursable expenses include mileage (at the SC State Rate), payment of regulatory application fees, courier service, and the cost of reproduction of plans and other paper media including contract documents, specifications, etc. Bolton & Menk will invoice for these services at cost plus 10%. We understand that regulatory application fees will be reimbursed monthly.

FORM OF AGREEMENT

In the event this proposal meets with your approval, please sign in the space provided below and return a copy via email, this will serve as our contract from our perspective. However, in the event your agency has more formal contractual requirements or a purchase order format, please forward this information for our signature.

Owner's 	Bolton & Menk 
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Ms. Kristin Johnson
October 11, 2023
Revised November 14, 2023
Revised December 04, 2023
Revised January 10, 2024

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Thank you for the opportunity to prepare and present our scope of services and fee proposal. Please contact me if you have any questions or need any additional information.

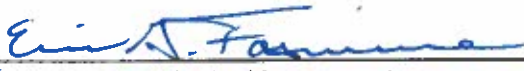

Sincerely,
BOLTON & MENK, LLC



Dylan Jordan, PE
Associate Project Engineer

Attachment - 2023 Rate Schedule

CC: Eric Sanford, PE
James Hayes, PLS
Wes Anderson
Proposal File

ACCEPTED:  DATE 26 February 2024
 Authorized Representative

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**BOLTON & MENK, LLC
RATE SCHEDULE I
2023**

HOURLY RATES FOR PERSONNEL			
Principal Engineer	\$300.00	Professional Land Surveyor	\$200.00
Director	\$225.00	Survey Crew	\$180.00
Senior Project Manager	\$200.00	One Man Survey Crew	\$150.00
Project Engineer	\$180.00	Research/Expeditior	\$125.00
Engineering Designer	\$165.00	Construction Coordinator	\$135.00
Engineer in Training (EIT)	\$145.00	Construction Administration	\$150.00
Stormwater Specialist	\$200.00	Construction Observer	\$135.00
Senior Planner	\$200.00	SCDHEC – CPESC Inspector	\$150.00
Urban Planner	\$165.00	Regulatory / Governmental Liaison	\$300.00
Sr. Landscape Architect	\$200.00	Permit Coordinator	\$125.00
Landscape Architect	\$175.00	Expert Witness	\$500.00
Landscape Designer	\$145.00	Certified Arborist	\$250.00
GIS Analyst / Technician	\$225.00		
Senior Environmentalist	\$200.00		
Graphic Designer	\$175.00		
Administrative	\$85.00		

REIMBURSABLE EXPENSES

Blackline Prints	\$4.00/per sheet	Color Printing		
		Size	Color Bond	Photo Bond
Travel Expense	\$0.65/mile			
Photocopy – Color	\$0.40/sheet			
Photocopy – B/W	\$0.15/sheet	24 x 36	\$7.00 / sheet	\$26.00 / sheet
Outsourced Expenses	\$ Cost plus 10%	30 x 42	\$10.00 / sheet	\$30.00 / sheet
Courier – Local	\$30/trip	36 x 48	\$15.00 / sheet	\$33.00 / sheet
Courier - +20 miles	\$50/trip	54 x 60	\$30.00 / sheet	\$51.00 / sheet
		54 x 76	\$38.00 / sheet	\$55.00 / sheet
		54 x 96	\$50.00 / sheet	\$70.00 / sheet

THE ABOVE HOURLY RATES MAY BE INCREASED AFTER ONE (1) YEAR FROM DATE OF CONTRACT, OR APPROVED PROPOSAL.

Owner's <i>EF</i>	Bolton & Menk <i>[Signature]</i>
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