

SE-240

SMALL PROFESSIONAL SERVICES CONTRACT TERMS AND CONDITIONS**AGENCY: SOUTH CAROLINA OFFICE OF RESILIENCE****PROJECT NAME: ISLE OF PALMS STORMWATER INFRASTRUCTURE****PROJECT NUMBER: D30-N015-MJ****A/E NAME: THOMAS & HUTTON****ADDRESS: 682 JOHNNIE DODDS BOULEVARD, SUITE 100****MOUNT PLAESANT, SC 29464**

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 Terms and Conditions as they apply to the Contract for the project listed above.

A. CONTRACT DOCUMENTS

1. Documents forming a part of this contract are, in order of precedence:
 - a. These Terms and Conditions, 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: \$2,125,800.00

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 DRIVE****TELEPHONE: 803-822-9580****EMAIL: ERIC.FOSMIRE@SCOR.SC.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: RICHARD KARKOWSKI**TITLE: PRINCIPAL****ADDRESS: 682 JOHNNIE DODDS BOULEVARD, SUITE 100****TELEPHONE: 843.849.0200****EMAIL: karkowski.r@tandh.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 A 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 Subconsultant 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's 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, 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. The Agency shall compensate the A/E for the services rendered as described in the Contract Documents in Section A. The A/E may make application for payment for services performed on a monthly basis. 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.
2. The Agency shall compensate the A/E for Additional Services that may arise during the course of the Project by negotiated Amendment to this contract. The hourly billing rates to be used to negotiate additional services by the A/E and the A/E's consultants shall be included as an attachment referenced in Section A.
3. 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.
4. The Agency shall compensate the A/E for Reimbursable Expenses described in the Contract Documents referenced in Section A as a not-to-exceed amount. 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.
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://cga.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. Payments are due and payable upon presentation of the A/E's invoice. 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 Agency 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: 12/30/2022

A/E:

BY: 
(Signature of Representative)

PRINT NAME: RICHARD KARKOWSKI

PRINT TITLE: PRINCIPAL

DATE: 11/21/22



682 JOHNNIE DODDS BOULEVARD, SUITE 100 | POST OFFICE BOX 1522
MT. PLEASANT, SC 29464 | 843.849.0200
THOMASANDHUTTON.COM

November 21, 2022

Ms. Karen L. Olson, P.E.
Infrastructure Engineer, Disaster Recovery Division
South Carolina Office of Resilience
632 Rosewood Dr., Columbia, SC 29201

Re: Isle of Palms Phase 3 Drainage
41st Avenue Outfall
City of Isle of Palms, South Carolina
Letter Agreement for Services

Dear Ms. Olson:

Thank you for requesting our engineering services the Phase 3 Drainage – 41st Avenue Outfall Project located on Isle of Palms, South Carolina. As you are aware, Thomas & Hutton recently completed the study, design, and permitting for the 41st Avenue Outfall Project.

Our services will consist of the SE-240, General Consulting, Engineering Design, additional SCOR related plan set requirements, and Environmental Site Assessment as set forth in the General Provisions and supplemental exhibits attached hereto, and such additional services as you may request during the course of the Project. We understand that you will furnish Thomas & Hutton with full information as to your requirements, including any special or extraordinary considerations for the Project and will make all pertinent existing data available to us.

Payment for our services will be as described in the attached General Provisions. You will be billed monthly for our services rendered and for Reimbursable Expenses.

We propose that payment for our services will be as follows:

<u>Phase</u>	<u>Fee Structure</u>	<u>Budget</u>
General Consulting:	Lump Sum	\$ 3,200.00
Engineering Design:	Lump Sum	\$ 14,790.00
Environmental Site Assess.:	Lump Sum	\$ 7,000.00
Bidding:	Lump Sum	\$ 23,060.00
TOTAL:		\$ 48,050.00

 CLIENT'S INITIALS

 CONSULTANT'S INITIALS

Ms. Karen L. Olson, P.E.
South Carolina Office of Resilience
Letter Agreement for Services
November 21, 2022
Page 2

The above fee arrangements are based on prompt payment of our invoices and the orderly and continuous progress of the Project through completion.

It is necessary that you advise us in writing at an early date if you have budgetary limitations for the overall Project cost or Construction Cost. We will endeavor to work within those limitations. At appropriate times during the Design Phase, we can submit to you our opinions as to the probable Construction Cost of the Project. We do not guarantee that our opinions will not differ materially from bids or negotiated prices.

This proposal between South Carolina Office of Resilience ("Client"), and Thomas & Hutton Engineering Co. ("Consultant" or "Thomas & Hutton"), consisting of the Scope of Services, General Provisions, Consulting Services Rate Sheet, and this Letter Agreement with authorizing signatures, represents the entire understanding between Client and Thomas & Hutton with respect to the Project. This Letter Agreement may only be modified if completed in writing and signed by both parties.

Thomas & Hutton will begin work on this Project upon receipt of an executed copy of this Letter Agreement.

If the arrangements set forth in this Letter Agreement are acceptable to you, ***please sign and initial the enclosed documents in the spaces provided below and return to Thomas & Hutton.*** This proposal will be open for acceptance until October 31, 2022, unless changed by Thomas & Hutton in writing. We appreciate the opportunity to prepare this proposal and look forward to working with you on the Project.

 CLIENT'S INITIALS

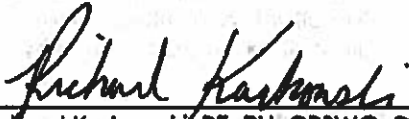
 CONSULTANT'S INITIALS

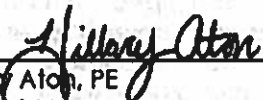
Ms. Karen L. Olson, P.E.
South Carolina Office of Resilience
Letter Agreement for Services
November 21, 2022
Page 3

The parties agree and acknowledge that this Agreement may be executed by electronic signature, and the parties may rely upon such electronic signatures as an original record of signature.

Respectfully,

THOMAS & HUTTON ENGINEERING CO.

By 
Richard Karkowski, PE, PH, CPSWQ, D.WRE
Principal / Project Manager


By 
Hillary Olson, PE
Project Manager

RPK/ala

Enclosures: Scope of Services
General Provisions
Consulting Services Rate Sheet

SOUTH CAROLINA OFFICE OF RESILIENCE

ACCEPTED: 30 December 2022

By 

Chief of Staff & General Counsel
TITLE

 CLIENT'S INITIALS

 CONSULTANT'S INITIALS

SCOPE OF SERVICES

1. SCOPE OF SERVICES

A. General Consulting Phase

Consultant shall provide general clerical/administration duties to support the Project including typing, preparation of packages for submittal, and mailing. Consultant shall attend project meetings and conference calls at the request of Client. Services will be provided on a lump sum basis.

B. Design Phase

The current design will be revised based on the City's intent to extend the limits of the proposed piped ditch to further protect critical and City owned infrastructure, as well as provide additional storage area for staging essential equipment during emergencies. The construction plan set will be updated to incorporate the revised design and progressed as necessary to meet the South Carolina Office of Resiliency's standards and requirements construction drawings. The plans will be submitted to Client for review.

C. Phase I Environmental Site Assessment

Consultant will prepare a Phase I Environmental Site Assessment (ESA) for the subject property in accordance with NEPA, Part 58 Requirements and ASTM E 1527-13, Standard of Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. The objective of the Phase I ESA will be to identify areas representing significant environmental concerns through a review of the site history, the review of regulatory agency database information, the performance of a site reconnaissance, and the evaluation of potential impacts from adjacent properties. The Phase I ESA will be performed to identify the potential environmental concerns at the site. The Environmental Assessment will be completed using the HUD "Environmental Assessment Determinations and Compliance Findings for HUD-Assisted Projects 24 CFR Part 58" Form. Consultant will submit a draft EA and draft public notices to SCOR for review and approval. Consultant will publish SCOR approved required notices and distribute to interested parties. Consultant will acquire access to HUD's Environmental Review Online System (HEROS) and submit the final EA to SCOR through HEROS. A copy of the final report will also be submitted to SCOR via email submittal. Consultant will assist SCOR in developing responses to any public comments received from the published public notices.

EST CLIENT'S INITIALS

TH CONSULTANT'S INITIALS

D. Construction Administration

Consultant will provide the following Construction Administration Services:

- Prepare Bid Documents and follow bidding procedures outlined in Chapter 6 of the Office of State Engineer (OSE) Manual for Planning and Execution of State Permanent Improvements.
- Respond to Bidders' questions and create addenda as necessary.
- Review bids received and determine if each is responsive and responsible.
- Prepare a Bid Tabulation and Comparison.

E. Exclusions

Unless a specific scope is included in this Agreement, these items are not included in the Scope of Services:

- Archaeological survey and report
- Endangered species survey and report
- Off-site work unless specifically covered in the Scope of Services
- Approvals or permits other than those related to the Scope of Services covered by this Agreement
- Act as an expert witness for legal activities
- Attend construction progress meetings
- Construction engineering and inspections
- Review of shop drawings
- Respond to RFIs during construction
- Preparation of record drawings
- Post-construction survey

These items can be coordinated or provided, if requested by Client in writing.

EST CLIENT'S INITIALS

TH CONSULTANT'S INITIALS



2022 CONSULTING SERVICES RATE SHEET

Thomas & Hutton provides services on a time and expense basis as follows:

1. This basis includes allowance for direct salary expenses and for direct non-salary expenses. It also provides for services we may subcontract to others.
2. Direct salary expenses are generally based upon our payroll costs. The payroll costs include the cost of salaries and wages (including sick leave, vacation, and holiday pay) for time directly chargeable to the project, plus, unemployment, excise, payroll taxes, and contributions for social security, employment compensation insurance, retirement benefits, and medical and insurance benefits.

The current hourly rate charges for each skill position for 2022 are as follows:

Hourly Rate	Engineer	Survey	Landscape	GIS	Quality Control	Business/ Administrative
\$ 285.00	Consultant	Consultant	Consultant	Consultant	Consultant	
\$ 240.00	Senior Manager	Senior Manager Survey Party (3-Men)	Senior Manager	Senior Manager	Senior Manager	Senior Manager
\$ 215.00	Project Manager V Project Engineer V	Survey Manager V Project Surveyor V	Landscape Architect V LA Project Manager V	GIS Manager V		
\$ 200.00	Project Manager IV Project Engineer IV	Survey Manager IV Project Surveyor IV	Landscape Architect IV LA Project Manager IV	GIS Manager IV		Senior Application Developer IV, Software/Computer Consultant IV
\$ 185.00	Project Manager III Project Engineer III	Survey Manager III Project Surveyor III	Landscape Architect III LA Project Manager III	GIS Manager III		Senior Application Developer III, Software/Computer Consultant III
\$ 175.00	Project Manager II Project Engineer II	Survey Manager II Project Surveyor II Survey Party (2-Men)	Landscape Architect II LA Project Manager II	GIS Manager II	Construction Administrator II	Senior Application Developer II, Software/Computer Consultant II
\$ 160.00	Project Manager I Project Engineer I	Survey Manager I Staff Surveyor V Project Surveyor I	Landscape Architect I LA Project Manager I	GIS Manager I	Construction Administrator I	Grant Administrator, Senior Application Developer I, Software/Computer Consultant I
\$ 130.00	Designer IV Engineering Technician IV	Survey Field Supervisor	Landscape Designer IV	GIS Analyst IV	Field Representative V	Application Developer IV
\$ 140.00	Designer III Engineering Technician III	Staff Surveyor IV	Landscape Designer III	GIS Analyst III	Field Representative IV	Application Developer III
\$ 125.00	Designer II Engineering Technician II	Staff Surveyor III Survey Party (1-Man)	Landscape Designer II	GIS Analyst II		Permit Coordinator III, Application Developer II
\$ 115.00	Designer I Engineering Technician I	Staff Surveyor II	Landscape Designer I	GIS Analyst I	Field Representative III	Application Developer I, Permit Coordinator II, Admin IV
\$ 105.00	CADD Technician III	Staff Surveyor I Survey Technician III	Landscape Technician III	GIS Technician III	Field Representative II	Permit Coordinator I
\$ 95.00	CADD Technician II	Survey Technician II	Landscape Technician II	GIS Technician II		
\$ 90.00	CADD Technician I	Survey Technician I	Landscape Technician I	GIS Technician I	Field Representative I	Admin III
\$ 85.00						Admin II
\$ 80.00						Admin I
\$ 420.00	Expert Witness					

3. When warranted, overtime will be charged for any non-salary employees. Overtime hours will be billed at 1.5 times the individual's charge rate.
4. Direct non-salary (reimbursable) expenses, including printing, reproduction, air travel, lodging, and meals are billed at cost. Travel in company or private vehicles will be billed at the 2022 IRS Standard Mileage Rate and may be revised based on fuel pricing. Outside consultant fees will be billed at 1.15 times the cost.
5. All rates and charges are effective through January 1, 2023, including printing, reproductions, materials, and travel and are subject to change at that time. New rates and costs will become immediately effective to contracts in effect at the time of rate changes.

EST



City of Isle of Palms, SC
 Phase 3 Drainage Outfall Design Permitting
 Proposed Engineering Fee Breakdown



Phase/Task	Thomas & Hutton Labor													Sub-Contractors						TOTAL LABOR	TOTAL L.A.R.
	Project Manager (PM) (h)	Designer (D) (h)	Project Designer (PD) (h)	Lead Structural Eng (h)	Structural Eng II/IV (h)	Survey Manager (SM) (h)	Survey Party (h)	Survey Tech (h)	CD Designer (h)	Field Eng IV (h)	Admin Clerical (h)	PERMANENT	SELLA (Temporary)	Civil/Technical	SW	Printing	NOFA Labor	NOFA LAR			
General Consulting	Base Project																				
NCOR Coordination	8	8																	\$3,200	\$3,200	
Engineering Design Modification and Plan Update																			\$3,200	\$3,200	
Final Design	8	16	50																\$10,400	\$10,400	
Update Estimate of Probable Construction Cost	4	4	24																\$2,400	\$2,400	
Environmental Assessment	2	2																	\$800	\$800	
Construction Administration																					
Meeting	20	40	80																\$23,040	\$23,040	
Total Hours	42	70	0	154	0	0	0	0	0	0	0	0	0	0	0	0	0	0	42	42	
TOTAL	\$9,680	\$12,960	\$0	\$17,760	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$23,040	\$48,880	

USA

