



AGREEMENT FOR PROFESSIONAL SERVICES
N. Church Street & Oakland Avenue Stormwater Improvements
SCOR Project No: IP-21-2101-01
City of Florence, South Carolina

This Agreement for **Professional Services for N. Church Street & Oakland Avenue Stormwater Improvements** ("Project") by and between the City of Florence, SC, hereinafter called the OWNER (a.k.a. AGENCY / Agency), and W.K. Dickson & Co., Inc., hereinafter called the CONSULTANT (a.k.a. A/E / ENGINEER);

The parties hereto do mutually agree as follows:

SCOPE OF WORK

See attached documents.

TIME OF PERFORMANCE

See attached documents.

SUMMARY OF FEES

See attached documents. A brief summary follows:

Schedule of Fees		
<i>Task</i>	<i>Fee Type</i>	<i>Fee Amount</i>
Total Lump Sum Fees	Lump Sum	\$709,224
Total Hourly / T&M Fees	Hourly + Expenses	\$0
	<i>Total</i>	\$709,224


ATTACHMENTS

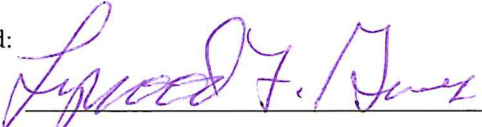
- SE-240 – Small Professional Services Contract for Construction Projects
- Professional Design Services Scope (by WK Dickson)


ACCEPTANCE

See the following page.

IN WITNESS WHEREOF, the CONSULTANT and the OWNER have executed this Contract as of the date written below.


Approved: 
By: _____
Name: Kevin Rawlinson
Title: Finance Director CFO
Date: 5/12/2023


Approved: 
By: _____
Name: Lynwood F. Givens
Title: Purchasing Agent

Approved: 
By: _____
Name: Clint Moore
Title: Assistant City Manager


ATTEST:

OWNER: CITY OF FLORENCE, S.C.

By: 
Name: Casey C. Moore
Title: Municipal Clerk

By: 
Name: Randall S. Osterman
Title: City Manager

CONSULTANT: W.K. DICKSON & CO., INC.

By: 
Name: Bryan E. Thomas, PE
Title: Vice President / Regional Manager
Address: 5 Legacy Park Road, Suite A
Greenville, SC 29607

SE-240
SMALL PROFESSIONAL SERVICES CONTRACT FOR CONSTRUCTION PROJECTS

AGENCY: City of Florence, SC

PROJECT NAME: N. Church Street & Oakland Avenue Stormwater Improvements

PROJECT NUMBER: SCOR Project No: IP-21-2101-01

A/E NAME: W.K. Dickson, & Co., Inc (WK Dickson)

ADDRESS: 5 Legacy Park Road, Suite A

Greenville, SC 29607

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:

N/A

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: \$2,364,080

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: Clint Moore

TITLE: Assistant City Manager

ADDRESS: 324 West Evans Street, Florence, SC 29501

TELEPHONE: (843)-665-2047

EMAIL: cmoore@cityofflorence.com

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: Lisa Wells, PE, CFM

TITLE: VP / Watershed Services Director

ADDRESS: 5 Legacy Park Road, Suite A, Greenville, SC 29607

TELEPHONE: 864-990-0180

EMAIL: lwells@wkdickson.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:

\$ 709,224

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:

\$ N/A

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:

\$ N/A

- 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://cg.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: Clint Moore

PRINT TITLE: Assistant City Manager

DATE: 5/12/23

A/E:

BY: 
(Signature of Representative)

PRINT NAME: Bryan Thomas, PE

PRINT TITLE: Vice President

DATE: 4/27/23

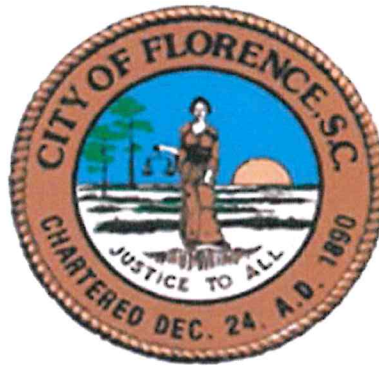


Professional Design Services Scope

for

**N. Church Street & Oakland Avenue
Stormwater Improvements
SCOR Project No: IP-21-2101-01**

for



City of Florence, SC

Attachment A

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Professional Design Service Scope

N. Church Street & Oakland Avenue Stormwater Improvements

DESIGN AND CONSTRUCTION ADMINISTRATION PHASE

The Consulting Engineer, hereafter referred to as ENGINEER, shall perform all services for the City of Florence, hereafter referred to as OWNER, in accordance with the latest editions of the:

- City of Florence Unified Development Ordinance
- City of Florence Planning, Research, and Development Department Standards
- City of Florence Design Guidelines for Downtown Florence, South Carolina
- SCDOT Standard Specifications for Roads and Structures
- SCDHEC Erosion and Sediment Control Planning and Design Manual
- Other applicable City, State or Federal standards

The ENGINEER'S services shall include the following:

Task 1. Project Management & Administration

The ENGINEER's Project Manager will manage the project in a manner that will assure the quality of deliverables and allow for ample coordination with the OWNER, including:

- Prepare and submit a project schedule for review and approval by the OWNER. This schedule will be used throughout the life of the project as a project control system for the ENGINEER and as a basis for status reporting to the OWNER.
- The ENGINEER'S Project Manager shall prepare and submit a monthly progress report to update the project schedule, list milestones achieved, provide status of each major task, support and document schedule changes, update product costs and justify changes to the schedule or proposed budgets. Monthly progress reports are due at the end of each month and shall accompany each invoice.
- The ENGINEER shall support the OWNER to provide quarterly reports to SCOR in accordance with the CDBG-MIT Subrecipient Reporting Agreement.
- The ENGINEER'S Project Manager shall coordinate and oversee all project activity on a regular basis (daily, weekly, monthly, etc.) related to all administrative and technical

Attachment A

aspects of the project. In particular, the Project Manager will supervise and direct all staff related technical components of the project including modeling, design, construction document preparation, specification development, etc.

The ENGINEER will implement Quality Control to ensure all aspects of the project meet standard of care, design criteria, scope requirements as well as any other project controls established with the City; including but are not limited to: validating model results, performing field visits and/or using aerial mapping to verify watershed boundaries, estimated flow paths, actual land uses, spot check field-surveyed storm structures, culverts, channel widths, hand checking flow calculations, hand checking slopes, etc.

Task 2. Data Collection & Field Surveys

The ENGINEER will assimilate relevant data such as GIS, as-built drawings, FEMA flood studies, USGS studies, history of flooding, etc. GIS data may include aerial photography, topography, zoning, soils, planimetrics, stormwater inventory, etc.

The ENGINEER will determine additional data needs based on the data available to complete the modeling and analysis within the project limits. Through preliminary field investigation and GIS analysis, the ENGINEER will identify systems and locations requiring stormwater inventory data and surveying. Prior to field collection, the ENGINEER will review results of preliminary investigation with the OWNER to finalize areas to be surveyed and modeled in detail.

The ENGINEER shall perform a survey of the drainage system and surrounding area (as shown on Attachment B) as necessary for the completion of project design and construction plans. All horizontal surveys shall be tied to the South Carolina State Plane Coordinate System (North American Datum 1983) and all vertical surveys shall be based on the North American Vertical Geodetic Datum of 1988 (Sea Level). The survey shall comply with the standards of a Class A survey as detailed in the Standards of Practice Manual for Surveying in South Carolina, June 26, 2009, or latest revision.

Task 3. Subsurface Engineering Work

Subsurface Engineering work shall be limited to closed-circuit television (CCTV) camera inspection performed in conjunction with preliminary engineering design phase to assess the condition of stormwater assets. CCTV will be focused on pipe segments that may contribute to the flooding but are deemed to meet design capacity. The total pipe length to CCTV is estimated at 3,000 linear feet or 25% of the total length estimated in the subrecipient application.

ENGINEER will supplement topographic survey with utility locating services provided by OWNER's staff.

Attachment A

Task 4. Geotechnical Subsurface Investigations

ENGINEER will secure and manage a consultant to perform geotechnical subsurface investigations necessary for completion of the final design documents after receiving concurrence on preliminary design recommendations from the OWNER. The analysis will be limited to soil boring and infiltration testing to determine seasonally high ground water elevation and to support alternative BMP site selection. The results of the investigation will be evaluated by a geotechnical engineer and an engineering report will be prepared.

Task 5. Stormwater Modeling Analysis & Preliminary Design (50%)

The ENGINEER will utilize Storm Water Management Model (SWMM) software to develop hydrologic and hydraulic characteristics for the following Areas of Interest shown in the Attachment B.

Primary System

- Oakland Avenue Upgrades including the downstream reach of Pye Branch and outfall across CSX Right-of-Way

Secondary Networks

- Roughfork Street Assessment (Secondary System)
- North Church Street Assessment (Secondary System)
- Brand/Maxwell Street Assessment (Secondary System)

Based upon the modeling results, portions of the storm drainage system that are not meeting established design standards will be identified and prioritized for possible improvements. City Staff input will be cross-referenced to the model results to determine problems that may have been misidentified, that should be classified as maintenance or nuisance issues, or that may not qualify for service under the established project guidelines. All proposed improvement alternatives will at least incorporate the proposed Oakland Avenue upgrades as identified by the OWNER.

Once the problem areas have been identified, improvement options will be considered that may include:

- Upgrade of the entire drainage system to meet established design criteria;
- Upgrade of portions of the drainage system to lesser design standards;
- Use of alternative best management practices for water quantity and quality control, such as detention ponds; and
- Alternative alignments and materials to minimize construction cost and impacts to private property and transportation systems.

Attachment A

The ENGINEER shall prepare a sealed engineering report providing recommendations, concerns, and recommended improvements, conceptual alternative improvements, and project phasing.

A budget cost analysis will be computed using recent bid tab information of similar projects and input on the local bid climate from City Staff. Budget costs for drainage improvements shall include installation of the following elements: storm drainage improvements, channel restoration and stabilization materials, grading, necessary street improvements, water and sewer utility relocations, erosion and sediment control measures, traffic control measures, miscellaneous items (e.g. fencing, walls, etc.), and easement acquisition estimates.

Once the OWNER has reviewed the budget cost analysis and recommended improvement options, the Engineer shall develop construction design plans, supporting documents, and the real estate acquisition table identifying properties impacted by the construction of the project for the review and comment by the OWNER, private utility providers, and the appropriate permitting agencies.

The preliminary design (50%) plans and supporting documents shall be at an appropriate level of completeness to accurately identify critical impacts to utilities, traffic, erosion control, permitting, private property, methods of construction, project special provisions, and associated costs.

The task also includes review meeting(s) with the appropriate OWNER staff to receive and discuss review comments.

Task 6. Utility Coordination and Design

The Utility Coordination efforts during the Design Phase shall at a minimum identify, address, and/or resolve all utility conflicts and required public utility easements associated with the construction of the recommended drainage improvements. Public utility relocation will be designed and construction plans and supporting documents will be developed as required. The ENGINEER will also coordinate private utility relocations as necessary.

The OWNER's representative for utility coordination should be copied on all correspondence or communications between the ENGINEER and any agency or utility owner or representative. Utility Coordination and Design shall be performed with the review and approval of the Project Manager, the OWNER's representative for utility coordination, and any applicable utility owners.

Attachment A

Task 7. Traffic Control Plans and Approvals

The ENGINEER shall coordinate with OWNER and South Carolina Department of Transportation (SCDOT) to develop construction traffic control plans and supporting documents. The ENGINEER shall assist the OWNER in obtaining approval for the project and/or securing a SCDOT Encroachment or Municipal Agreement.

Task 8. Erosion Control Plans, Details, Narrative, and Specifications

The ENGINEER shall coordinate with SCDHEC (Division of Environmental Quality), to develop Erosion and Sedimentation Control construction plans, and obtain approvals and applicable permit for the project.

Task 9. Contract Document Preparation

The ENGINEER shall prepare thorough and complete Contract Documents to cover those items of material, work, and other conditions special to the Project. The OWNER shall provide the front-end contract, General Conditions, and Standard General Provisions to the ENGINEER utilizing the latest working version of the EJCDC standard contract documents. The ENGINEER shall update these standard contract documents to match any project specific related items. Also, the ENGINEER shall prepare the Technical Specifications and Project Special Provisions. Contract documents shall be submitted with the Preliminary Design and Final Design Submittal.

Task 10. Permits

The OWNER is responsible for submittal and approval of the required environmental assessment (EA) and will provide this report to the ENGINEER in a timely manner so as to facilitate complete and compliant design. The ENGINEER shall prepare additional submittals and approvals required by Federal, State and City permitting agencies and coordinate the reviews for permits and approvals. Anticipated stormwater permits for this project include US Army Corps of Engineers 404 permit(s), SCDHEC Section 401 water quality certification; and City of Florence Stormwater permit. An individual 404 permit and environmental mitigation are excluded from this scope.

The ENGINEER will submit permit applications to the appropriate agencies upon completion of the Preliminary Design Submittal plans. Up to three (3) separate Nationwide 404 Permit and corresponding General Certification preconstruction notifications (PCN) may be submitted based on the response from the permitting agencies. The ENGINEER will respond to permitting agency comments and incorporate comments into design documents if feasible.

Task 11. Property and Storm Drainage Acquisition Assistance

The ENGINEER shall prepare appropriate documents and provide required information to support the Real Estate Acquisition Phase. The OWNER will perform all easement acquisitions.

Attachment A

After review by the OWNER's Project Manager during the Preliminary Submittal, the ENGINEER shall finalize all plats and submit them per the requirements included in this section. All major preliminary plan review comments will be addressed prior to submitting the plats and plan sheets for easement acquisition.

The ENGINEER shall prepare a list of all properties that require easements, or right-of-way/property acquisition before deed research is updated from the Planning Phase for approval by the Project Manager.

Following approval of the list by the OWNER, the ENGINEER shall update all property survey data, record information including easements, deeds, and plats previously acquired and/or prepared and supplement them as necessary to complete the Project. The ENGINEER shall make all necessary surveys to determine all property lines, areas maintained as right-of-way, and/or existing right-of-way along the Project and to establish the cut/fill lines, limits of construction easements, drainage easements, guy wire easements, and any other easements deemed necessary by the ENGINEER.

The ENGINEER shall verify existing property corners to ensure the accuracy of the final survey exhibits and plats. All plats and exhibits shall comply with the SC Board of Examiners for Engineers and Surveyors "Standards of Practice Manual for Surveying in South Carolina." All plats shall match exactly the final construction plans with respect to right-of-way, property lines, and easements.

The ENGINEER shall obtain from all public records and indicate on plats the current owners, tax identification number, description, book and page number of the official registry of all properties affected by the proposed acquisition, right-of-way, or easement.

The ENGINEER shall submit written legal descriptions as directed by the OWNER. These shall only be required for the condemnation process.

Task 12. Public Meetings and Citizen Involvement

The ENGINEER shall attend up to two (2) public meetings scheduled and coordinated by the OWNER to present the design of the recommended improvements. The OWNER will supply all materials and will manage the public meetings with ENGINEER to support. ENGINEER will provide the OWNER with design drawings including proposed pipe material, traffic impacts (including detour routes) and contractor working hours.

Task 13. Final Design Submittal

Following the review of the preliminary design plans, the ENGINEER shall finalize the design incorporating all review comments as appropriate.

The ENGINEER shall provide plans and/or documents that address and/or respond to all comments made by OWNER'S staff.

Attachment A

The ENGINEER shall also submit a digital copy of all final design plans, traffic control plans, erosion control plans and details, specifications and computations, SWMM for the combined hydrology and hydraulic models and "PDF" files for other written documents.

Task 14. Bid Phase Services

The ENGINEER will provide the following bid services, to include:

- Attending and conducting the bid opening;
- Issuing up to two (2) addendums;
- Providing clarifications and information as requested by bidders;
- Tabulation of the bids received;
- Review of the bid packages for compliance with the contract requirements; and
- Recommendation of the contractor.

Task 15. Construction Administration And Observation

Upon completion of a construction contract between the City of Florence and Contractor, ENGINEER will assist during the construction phase, which is anticipated to be complete within six (6) months, by providing the following office administration and construction observation services:

- Participate in pre-construction conference at the project site to review the project schedules, requirements, conditions etc with the Contractor.
- Provide office administration services including responses to contractors' RFIs, shop drawing submittal reviews, pay application reviews/approvals, change order reviews/approvals, and assistance in resolving issues that results from differing field conditions during construction.
- Provide periodic observation of construction work throughout the construction scheduled and following up the visits with emailed progress reports with accompanying progress photos.
- Perform pre-final site inspections to prepare a punch list, determine date of Substantial Completion and issue Certificate of Substantial Completion.
- Perform a final site inspection to verify all required punch lists items were completed, issue a final Certificate for Payment.

Attachment A

- Perform all necessary field and office work to prepare “As-built” record drawings of the constructed utility systems and submit them to the appropriate agencies for approvals.
- Assist the City in securing all necessary approvals, permits, and other documents for project closeout and to meet the obligations of the grant.

Task 16. Reimbursables

Reimbursables shall include software costs for reproduction costs for plans, software costs for the E-Builder project management software, specifications, exhibits, color exhibits, general correspondence, etc.; postage and courier fees; travel, meals, and lodging; and other miscellaneous expenses

Attachment A

EXCLUSIONS & ADDITIONAL SERVICES

The following items are not included at this time, but can be added for additional fee:

- Due Diligence services;
- Right-of-way and/or easement research/location/acquisition services;
- Traffic, wetlands and/or environmental studies or services;
- Impact, tap, plat, permitting and/or review fees;
- Landscape / irrigation services;
- Design of gas, lighting, electric, telephone, or telecommunications systems;
- Foundation, structural and/or retaining wall design;
- CMT services;
- Additional document sets, specifications, renderings, and meetings not included herein.

TIME OF PERFORMANCE

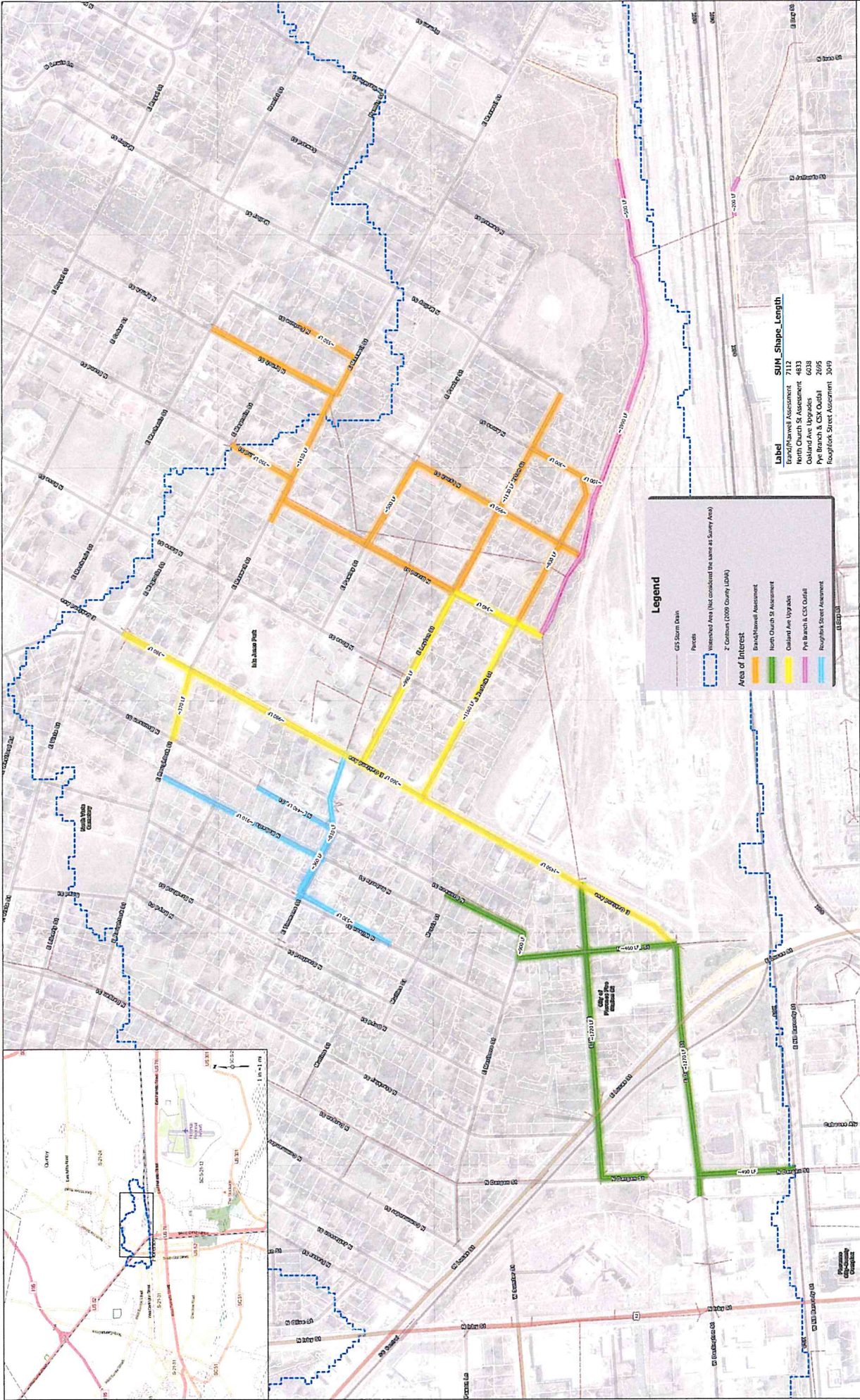
ENGINEER can begin work within two (2) weeks of receipt of the signed contract and delivery of all required OWNER-provided information as needed. ENGINEER will collaborate with the OWNER to develop a mutually-agreeable schedule for completion of all remaining tasks, concurrent with the overall project timeline established in the subrecipient agreement between the South Carolina Office of Resilience – Disaster Recovery Division and the OWNER.

BASIS OF COMPENSATION

- A. Basic Services. The OWNER shall pay the ENGINEER, for services set forth above in Scope of Services, a lump sum fee of \$709,224 (seven hundred nine thousand two hundred twenty four dollars).

A percentage of the Lump Sum (LS) Fee will be billed on the last day of each month. The percentage billed will be the percentage of Scope of Services work estimated to be completed as of the day of billing.

- B. Additional Services. The OWNER shall pay the ENGINEER for additional services which are not specifically called for in above, Scope of Services, on an hourly basis in accordance with the ENGINEER's standard rates provided in Attachment C.
- C. Premium Rate Adjustment. Should OWNER request an accelerated schedule requiring ENGINEER to work overtime hours, then a 1.25 premium rate adjustment shall be applied to current hourly rates or lump sum fees as applicable. Accelerated schedule and premium rate adjustment shall be approved as part of compensation at time of contract execution or by written amendment.



Attachment C

W.K. DICKSON & CO., INC.
2023 RATE SCHEDULE

LABOR

2023

Principal	\$263.00/hr.
Senior Consultant	\$242.00/hr.
Senior Project Manager	\$231.00/hr.
Senior Engineering Manager	\$231.00/hr.
Project Manager	\$200.00/hr.
Engineering Manager	\$200.00/hr.
Senior Project Engineer	\$179.00/hr.
Project Engineer	\$168.00/hr.
Senior Scientist	\$158.00/hr.
Scientist	\$144.00/hr.
Senior Planner	\$191.00/hr.
Planner	\$146.00/hr.
Senior Engineering Designer	\$152.00/hr.
Engineering Designer	\$139.00/hr.
Senior GIS Analyst	\$163.00/hr.
GIS Analyst	\$140.00/hr.
GIS Technician	\$118.00/hr.
Senior Construction Observer	\$140.00/hr.
Construction Observer	\$118.00/hr.
Project Administrator	\$86.00/hr.

EXPENSES

Reproductions	Cost
Mileage	IRS Rate
Telephone, Postage	Cost
Travel (Meals/Lodging)	Cost
Subconsultants	Cost + 10%

Note: The above rates are effective January 1, 2023. WK Dickson reserves the right to revise to reflect inflationary increases.