

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CONTRACT

THIS CONTRACT made and entered into this the 5th day of August 2022 by and between the TOWN OF MOUNT PLEASANT, SOUTH CAROLINA, hereinafter referred to as the "TOWN" and RUMMEL, KLEPPER, & KAHL (RK&K) hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS, the TOWN has determined that it is necessary to, and in the best public interest to employ a consultant to perform engineering design services for the Hobcaw Subdivision Drainage Study Project in the Town of Mount Pleasant; and

WHEREAS, the TOWN has solicited certain proposals for the professional services for firms to participate in the "On-Call Engineer Program", as a result of the Request for Qualifications dated August 11, 2021; and

WHEREAS, the CONSULTANT hereby agrees to perform the Work contracted for in the Scope of Services, and in accordance with the terms and conditions contained herein.

NOW; THEREFORE, AND IN CONSIDERATION of the mutual covenants herein contained, the TOWN and CONSULTANT do hereby mutually agree as follows:

1. **SCOPE OF SERVICES:**

The CONSULTANT will do the following:

The CONSULTANT shall perform design services in accordance with the CONSULTANT'S Proposal dated July 18, 2022.

2. **PERIOD OF SERVICE:**

A) **Schedule:**

Upon receipt of a written Notice to Proceed, the CONSULTANT shall commence Work August 8, 2022, and proceed in accordance with the agreed schedule as contained herein.

3. **PAYMENT FOR SERVICES:**

- A) For services rendered, TOWN agrees to pay CONSULTANT an amount of Two Hundred Eighty-Seven Thousand, Two Hundred Twenty-Three and 00/100 Dollars (\$287,223.00). Payments for the CONSULTANT'S services shall be made in the form of progress payments as contracted services are completed.

The TOWN will only reimburse the CONSULTANT for actual hours worked and accepted by the TOWN. The CONSULTANT shall provide the TOWN with submittals demonstrating progress and as verification of actual work performed. The TOWN will confirm the progress of work prior to any payments being made to the CONSULTANT.

Request for payments shall be billed monthly for work performed during the previous monthly period to be received by the last day of the month, and submitted to the TOWN through Ms. Marissa Poultney, Project Engineer, for acceptance and approval. Approved statements shall be paid by the 15th day of the following month.

- B) Additional services of the CONSULTANT that are requested and approved by the TOWN shall be billed and paid in accordance with approved modification(s) to this Contract; said requested and approved services shall be billed for Work performed during the previously monthly period.

- C) *Additional Expense/Costs:*

This Contract, including any approved modifications shall be inclusive of all costs, incidental or otherwise. Any other or additional costs shall be the responsibility of the CONSULTANT, unless otherwise agreed to between the parties in the form of a written change order.

- D) If the TOWN fails to make payment as stated in Paragraphs 3-A and 3-B, the CONSULTANT, after seven (7) days written notice, may suspend further services under this Contract until payment has been made in full, or for all amounts approved and due. However, the TOWN reserves the right to withhold payment of sums due the CONSULTANT in the event that the TOWN becomes credibly informed that any representations of the CONSULTANT are wholly or partially inaccurate, until the inaccuracy and the cause thereof is corrected to the TOWN'S satisfaction.

4. **TOWN'S RESPONSIBILITY:**

A) *Access:*

If applicable, the TOWN shall make provisions for the CONSULTANT to enter upon public and private lands as required to perform such work as surveys, inspections and evaluations in performing any aspects of the Scope of Services.

B) *Town's Representatives:*

The TOWN shall designate in writing one person to act as TOWN'S Representative with respect to the Work to be performed under this Contract. This representative shall have complete authority to transmit instructions, receive information, interpret and define TOWN'S policy and decision, with respect to the Work and services to be provided by this Contract. This representative shall be Marissa Poultney, Project Engineer, or her designee as conveyed in writing under his signature.

C) *Town Provided Information:*

With reasonable notice, the TOWN shall provide or assist the CONSULTANT in obtaining the following information:

A. Access to the site.

5. **CONSULTANT'S RESPONSIBILITIES:**

The services performed under this Contract shall be consistent with sound professional practices, and shall incorporate any Federal, State and Local regulations and standards that are applicable at the time the CONSULTANT rendered its services.

Services performed under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by a member of the profession currently practicing in the area under similar conditions.

6. **MISCELLANEOUS:**

A) *Use and Township Documents:*

The study, plans, recommendations and other documents or things prepared by the CONSULTANT for the project shall become and be the sole property of the TOWN. The CONSULTANT shall be permitted to retain copies thereof for its records and for its future professional endeavors. Such study, plans, recommendations and other documents or things are not intended for use on other projects by the TOWN or others. Any reuse by the TOWN or by third parties without the written approval of the CONSULTANT shall be at the sole risk of the TOWN and the TOWN shall indemnify and hold harmless the CONSULTANT from any and all liability costs, claims, damages, losses and expenses including attorney's fees arising out of, or resulting from such reuse; provided, however, that this agreement to indemnify and hold harmless shall not apply to any reuse of documents retained by or through the CONSULTANT.

6. MISCELLANEOUS CONTINUED:

B) Successors and/or Assigns:

The CONSULTANT shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the TOWN. Subject to the provisions of the immediately preceding statement, the TOWN and the CONSULTANT respectively, bind themselves, their successors and/or assigns and legal representatives to the other party to this Contract and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Contract.

C) No Third-Party Beneficiaries:

Nothing contained herein shall create a contractual relationship with, or any rights in favor of any third party.

D) Cost Feasibility:

Cost feasibility recommendations by the CONSULTANT shall be predicated using the CONSULTANT'S best professional opinion, including possible funding sources or programming alternatives.

E) Request for Proposals for Statement of Interest and Qualifications:

By reference the Request for Proposals for Statements of Interest and Qualifications for professional services are made part of this Contract, as if attached hereto.

F) Limits of Liability:

Services to be performed by the CONSULTANT under this Contract are intended solely for the benefit of the TOWN. Nothing contained herein shall confer any rights upon or create any duties on the part of the CONSULTANT toward any person or persons not a party to this Contract, including, but not limited to any CONSULTANT, Sub-Consultant, supplier or the agents, officers, employees, insurers, or sureties of any of them.

The CONSULTANT agrees to the fullest extent permitted by law, to indemnify and hold the TOWN harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the CONSULTANT'S negligent acts, errors or omissions in the performance.

G) Insurance:

The CONSULTANT shall, within ten (10) days of execution of this Contract, provide to the TOWN a Certificate of Insurance certifying proof of insurance for professional liability, General Public Liability, Property Damage Insurance, including vehicle coverage and Workers' Compensation insurance. The aggregate limit should be total insurance available for claims of at least \$1,000,000 per claim and \$1,000,000 aggregate.

6. **MISCELLANEOUS CONTINUED:**

H) **Termination:**

This Contract may be terminated by either party by seven (7) days written notice to the other in the event of substantial failure to perform in accordance with the terms hereof by the one party through no fault of the other party. The CONSULTANT shall be paid for acceptable services performed to the date of termination, including reimbursements then due.

I) **Abandoned or Suspended Work:**

If any work performed by the CONSULTANT is abandoned or suspended in whole or in part by the TOWN, other than for default by the CONSULTANT, the CONSULTANT shall be paid for services performed prior to receipt of a written notice from the TOWN of such abandonment or suspension in an amount equal to work performed as of the date of abandonment or suspension.

J) **Termination by the Town without Cause:**

This Contract may be terminated by the TOWN without cause upon seven (7) days written notice to the CONSULTANT. In the event of such a termination without cause, the CONSULTANT shall be compensated for all services performed prior to termination, together with Reimbursable Expenses incurred. In such event, the CONSULTANT shall promptly submit to the TOWN its invoice for final payment and reimbursement.

K) **Consultants:**

If applicable, all of the CONSULTANTS presented by the consulting firm to the TOWN in writing and/or at the project interview, shall be the CONSULTANTS used for the project. The CONSULTANT shall not substitute any CONSULTANTS in place of the CONSULTANT presented to the TOWN without the consent of the TOWN, for good cause shown.

NOTWITHSTANDING any provisions to the contrary, this Contract shall be considered to include the following documents. Any amendments to this Contract shall only be by written instrument signed by both parties:

- a) Invitation to Offerors
- b) Background/Project Overview
- c) Instructions to Offerors
- d) General Conditions
- e) Scope of Services
- f) AntiTrust/NonCollusion Oath
- g) Offeror's Statement
- h) Agreement or Purchase Order
- i) Notice of Award - CONSULTANT'S Acceptance of Award
- j) CONSULTANT'S Certificate of Insurance
- k) Notice to Proceed
- l) Any Addenda
- m) Any Change Orders, Supplements or Modifications

The CONSULTANT, Sub Recipient or Subconsultant shall not discriminate on the basis of race, color, national origin, physical disability, or sex in the performance of this contract. The CONSULTANT shall carry out all applicable requirements of state and federal law as well as the Town's anti-discrimination policies in the award and administration of contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Town deems appropriate.

By executing this Contract, the CONSULTANT represents to the TOWN that the CONSULTANT is professionally qualified to act as the CONSULTANT for the project and is licensed to practice professionally by all public entities having jurisdiction over the CONSULTANT and the project. The CONSULTANT further represents to the TOWN that the CONSULTANT will maintain all necessary licenses, permits or other authorizations necessary to act as CONSULTANT for the project until the CONSULTANT'S remaining duties hereunder have been satisfied. The CONSULTANT assumes full responsibility to the TOWN for the improper acts and omissions of its CONSULTANTS or others employed or retained by the CONSULTANT in connection with the project.

Execution of this Contract by the CONSULTANT constitutes a representation that the CONSULTANT has become familiar with the project and the local conditions under which the project is to be implemented.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the date above first written.

TOWN OF MOUNT PLEASANT

BY:


Eric M. DeMoura

TITLE: Town Administrator

ATTEST:



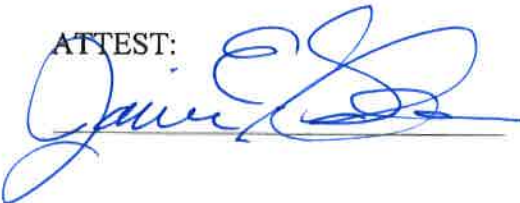
RUMMEL, KLEPPER, & KAHL (RK&K)

BY:


B. Keith Skinner, PE

TITLE: Partner-in-Charge

ATTEST:



NOTICE OF AWARD

TO: B. Keith Skinner, PE
Rummel, Klepper, & Kahl (RK&K)
1201 Main St Suite 1400
Columbia SC 29201

PROJECT DESCRIPTION: Hobcaw Subdivision Drainage Study

The TOWN has considered the proposal dated July 18, 2022, as submitted by you for the above-described Work.

You are hereby notified that your Proposal has been accepted for items in an amount of Two Hundred Eighty-Seven Thousand, Two Hundred Twenty-Three and 00/100 Dollars (\$287,223.00). You are required as per the Instructions for Offerors to execute the Agreement within five (5) calendar days and furnish the required Consultant's Certificate of Insurance within ten (10) calendar days from the time and date of this Agreement.

If you fail to execute said Agreement within the specified time, the Town will be entitled to consider all your rights arising out of the Town's acceptance of your Proposal as abandoned. The Town will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the Town.

DATED this 5th day of August 2022, at 12:00 o'clock P. M.

Town of Mount Pleasant

By: E. M. DeMoura
Eric M. DeMoura
Title: Town Administrator

ACCEPTANCE OF NOTICE:

Receipt of the above NOTICE OF AWARD is hereby acknowledged by B. Keith Skinner of RK&K, this the 8th day of August 2022, at 9:00 o'clock A. M.

Rummel, Klepper, & Kahl (RK&K)

By: B. Keith Skinner
B. Keith Skinner
Title: Partner-in-Charge

NOTICE TO PROCEED

TO: B. Keith Skinner
Rummel, Klepper, & Kahl (RK&K)
1201 Main St Suite 1400
Columbia SC 29201

Date: August 5, 2022

PROJECT DESCRIPTION: Hobcaw Subdivision Drainage Study

You are hereby notified to commence work in accordance with the Agreement dated August 5, 2022, on August 8, 2022, and you are to complete the work as prescribed within the agreed schedule.

TOWN OF MOUNT PLEASANT

By: E. M. DeMoura
Eric M. DeMoura
Title: Town Administrator

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by B. Keith Skinner, of RK&K, this the 8th day of August 2022, at 9:00 o'clock A. M.

Rummel, Klepper, & Kahl (RK&K)

By: B. Keith Skinner
B. Keith Skinner
Title: Partner-in-Charge