

SE-240
SMALL PROFESSIONAL SERVICES CONTRACT FOR CONSTRUCTION PROJECTS

AGENCY: SC Office of Resilience

PROJECT NAME: Priority Area 1 Stormwater Improvements

PROJECT NUMBER: D30-N056-PG

A/E NAME: Kimley Horn

ADDRESS: 200 South Tryon Street, Suite 200

Charlotte, NC 28202

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

A. CONTRACT DOCUMENTS

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

2. The contract is the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, whether written or oral.
3. The Agency's Budget for the Cost of the Work: \$1,749,667.00

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

B. REPRESENTATIVES

1. Agency's Representatives

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

NAME: Eric Fosmire

TITLE: Chief of Staff & General Counsel

ADDRESS: 632 Rosewood Dr Columbia, SC 29201

TELEPHONE: 803-822-9580

EMAIL: eric.fosmire@scor.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: Jason Diaz

TITLE: P.E., CFM

ADDRESS: 200 South Tryon Street, Suite 200, Charlotte, NC 28202

TELEPHONE: 704-954-7464

EMAIL: jason.diaz@kimley-horn.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:

\$ 294,050.00

2. Additional Services:

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

\$

3. Reimbursable Expenses:

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

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

\$

4. When any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The A/E shall be entitled to compensation in accordance with this Contract for all services performed whether or not the Construction Phase is commenced.
5. Unless authorized in writing by the Agency prior to incurring the expense, no expense for transportation, travel, or subsistence will be reimbursable to the extent the expense exceeds the amount for which a state employee would be reimbursed under the Travel Regulations. Travel Regulations means the State Fiscal Accountability Authority's Regulations for Reimbursement for Travel and Subsistence Expenses, Disbursement Regulations pdf found at [<https://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)

A/E:

BY: 
(Signature of Representative)

PRINT NAME: Eric G. Fosmire
Chief of Staff

PRINT NAME: Benjamin Taylor

PRINT TITLE: General Counsel

PRINT TITLE: Vice President

DATE: 22 July 2024

DATE: 7-21-2025



July 17, 2025

Amy Azarias
South Carolina Office of Resilience
603 Rosewood Drive
Columbia, SC 29201

Re: Letter Agreement for Professional Services for
Town of Pamplico Priority Area 1 Stormwater Improvements Project
Town of Pamplico, SC

Dear Amy:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) submits this Letter Agreement (“Agreement”) to the South Carolina Office of Resilience (“SCOR” or “Client”) for providing design, permitting and construction documents for the project (“Project”).

Project Understanding

SCOR intends to use a CDBG-MIT Infrastructure grant to fund the design and construction of the Priority Area 1 improvements identified in the H&H study dated October 2022. This includes upsizing and replacing damaged or insufficient infrastructure to increase capacity and provide a more positive slope on ditches and swales.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

Task 1: Data Collection

Kimley-Horn will provide field surveys to document the size, material, condition and location of drainage systems. The survey will also include 1-foot topographic mapping, utility locates (SC811), location of trees greater than 12” diameter at breast height (dbh), property lines (for up to 45 parcels), right-of-way, curb, sidewalk, edge of pavement, fencing, structures, and other items located within the survey as shown in the attached survey area exhibit. The survey sub-consultant will provide survey notification to the affected property owners. Kimley-Horn will also conduct one site visual assessment to document existing conditions.

This task includes subsurface utility engineering (SUE) level B which includes marking the presence and approximate horizontal position of the subsurface utilities by use of geophysical prospecting techniques. Level A SUE identifies the underground utilities by means of excavation (potholing) to visually confirm the location and depth. Level A SUE will be performed at up to six (6) locations within the project area. Level A SUE for more than the six (6) locations is not included in the scope of services. The bore holes will be backfilled with soil and capped with asphalt cold patch (if required).

A geotechnical sub-consultant will perform up to six (6) Standard Penetration Test (SPT) soil borings to a planned depth of 25 feet or to auger refusal/skewing. Groundwater measurements will be taken within the bore holes. The geotech will perform laboratory testing consisting of up to six geotechnical index tests (including Atterberg limits, Wash No. 200 sieve analysis, and natural moisture) and four standard Proctor moisture density tests on the collected bulk samples. The geotech will provide a written summary report documenting the work, providing descriptions of the encountered subsurface conditions, providing headwall later earth pressure parameters and foundation support recommendations, and discussing geotechnical-related aspects of construction. The bore holes will be backfilled with soil and capped with asphalt cold

patch (if required).

Task 2: Public Involvement

Kimley-Horn will conduct three (3) in-person public meetings. Kimley-Horn will provide the public meeting material (1-2 posters, sign-in sheet, handouts, and a slide presentation), document the general conversation, and provide meeting summaries. Kimley-Horn will prepare flyers and mailers for each meeting. The Town will assist with displaying the flyers in public locations. Kimley-Horn will also draft three (3) public notices for SCOR to review. Kimley-Horn will publish the notices in the local paper for public comment as required by the HUD 8-step and the FONSI/NOI RROF process.

Task 3: Hydraulic Design

Kimley-Horn will update the existing models used in the previously completed stormwater study using the information collected in Task 1. Kimley-Horn will use the existing models as a basis for the proposed conditions models. It is anticipated that the proposed improvements will be designed to provide capacity for the 25-year design event without overtopping and will check for pressurized flow. Kimley-Horn will perform an attenuation analysis to estimate the effect of attenuation within the system due to the culverts being in a series. Kimley-Horn will provide a basis-of-design report to document the calculations and assumptions made during the design and modeling of the proposed improvements.

This task also includes an analysis of potential downstream impacts using the 10% rule. The project will be analyzed to estimate impacts to the downstream infrastructure up to a point where the project drainage area is equal to 10% of the total drainage area. Based on the location of this project, downstream impacts are not anticipated. It is assumed that no new hydrology calculations or modeling is required and is not included in this scope of services.

Task 4: Plans and Cost Estimates

Kimley-Horn will prepare plans and an opinion of probable construction costs (OPCC) for review by SCOR and the Town. The following items will be completed:

- 30% Conceptual Design
 - Summary of existing conditions including survey
 - Plan view of proposed design elements in a detailed exhibit.
 - Estimate of quantities and OPCC
 - Identify necessary easements required to complete the project and coordinate with SCOR. Easement negotiations may be performed as an additional service.
 - Coordinate with the public and private utility providers within the proposed project limits. Utilities will be located using 811 and will be included in Task 1. This task does not include any utility relocation design. It is assumed that the proposed improvements can be made without relocation or major adjustments to the utilities.
- 60% Design Plans
 - Plans to include: Cover, Notes, Index, Legend, Plan View, Grading Limits, Utility Conflicts, Details, Demolition Plan, and Tree Protection Plan.
 - Estimate of quantities and OPCC
 - Prepare easement exhibits (up to forty-five (45)) and up to forty (40) hours of discussions with the property owners affected by the project. This task does not include the preparation of plats, appraisals, or negotiations. It is assumed that the required easements will be donated or provided by right of entry.
- 90% Design Plans
 - 60% plans and Storm Profiles, Invert Tables, Cross-Sections, Planting Plans, Traffic Control, Erosion and Sediment Control
 - Estimate of quantities and OPCC
- Final Plans
 - Updates to the 90% plans will meet the requirements of the SC Office of State Engineers

- (OSE) manual, chapter 5.
- Project manual and technical specifications
- Quantities and Final OPCC
- Permits (see Task 5)
- Benefit Cost Analysis (BCA)
 - Kimley-Horn will perform a BCA for the proposed final design using the latest FEMA BCA Toolkit. Kimley-Horn will provide a digital copy of the BCA analysis to HUD for review. Kimley-Horn will respond to up to one (1) round of comments.

Quality Assurance/Quality Control.

- Kimley-Horn will implement the processes that are defined in our internal Quality Assurance/Quality Control Manual. These include creating a project work plan that includes what will be reviewed, who is reviewing them, when they will be reviewed, and setting internal deadlines to provide time for the reviews and for updating based on input. The deliverables will be reviewed for accuracy, completeness, and logic. The senior project manager is responsible for this task.
- In addition to the reviews, Kimley-Horn will also maintain appropriate records of the projects and activities. This often includes a document that is maintained throughout the life of the project. This document will include all meeting minutes, copies of client directives, summary of decisions, significant correspondence, copies of deliverables, invoices, schedules, exhibits, quality control reviews, and agency comments.

Task 5: Permitting

Kimley-Horn will prepare and submit permit applications with the 60% plans for the following permits that are expected to be required for the project:

- SCDES - Stormwater Pollution Prevention Plan (SWPPP)
 - Includes one (1) pre-application meeting with SCDES staff.
 - Includes two (2) rounds of comments/revisions.
- SCDOT Encroachment Permitting Processing System (EPPS)
 - Includes one (1) onsite pre-application meeting with SCDOT staff
 - Includes one (1) post construction punch list walk with SCDOT staff
 - Includes two (2) rounds of comments/revisions.
- Utilities (if applicable)
 - Includes two (2) rounds of comments/revisions.
- Cultural Resources Review
 - Kimley-Horn will review the South Carolina State Historic Preservation Office (SCSHPO) ArchSite GIS Service to identify known or suspected archaeological and architectural sites within the Study Area, plus a 0.5-m radius for architectural resources that are listed on the National Register of Historic Places (NRHP) or eligible or potentially eligible for listing on the NRHP. One (1) figure depicting identified sites, if any, will be prepared in addition to one (1) memorandum summarizing ArchSite findings. Available ArchSite data on the properties identified will be attached. A Section 106 project review form with the appropriate documentation, including the ArchSite findings will be submitted to SHPO/THPO as part of the NEPA Section 106 review.
- T&E Species Survey & USFWS Consultation
 - According to the USFWS's Information for Planning and Consultation (IPaC) online database reviewed on April 15, 2025, the plant species American chaffseed (*Schwalbea americana*) and Canby's dropwort (*Oxypolis canbyi*) are listed as endangered by the USFWS and are known to occur within the project area watershed. Additionally, the bird species Red-cockaded woodpecker (*Dryobates borealis*) is listed as threatened and known to occur within the project area watershed.

Based on a desktop review, potentially suitable habitat for the Canby's dropwort may be present within the project boundary. Potentially suitable habitat for the American chaffseed and the Red-cockaded woodpecker is assumed to be absent. The presence of potentially suitable habitat for Canby's dropwort will require USFWS coordination in order to satisfy the requirements of the Pre-Construction Notification and NEPA Environmental Assessment (EA).

The mammal species *tricolored bat (*Perimyotis subflavus*) is listed as proposed endangered by the USFWS and is known to occur within the project area watershed. The presence of suitable roosting and/or foraging habitat for the tricolored bat is assumed within or in the proximity of the project area. It is anticipated that the USFWS will determine that the project may affect, but not likely adversely affect (MANLAA) the tricolored bat; therefore, pedestrian and/or acoustic surveys for this species are not expected.

A pedestrian botanical survey for the following protected plant species will be conducted during the optimal survey window as designated by USFWS. The optimal survey window is as follows:

- Canby's dropwort (*Oxypolis canbyi*) - mid-July to September

If occurrences of federally listed species are identified within the project area, then further coordination with USFWS may be necessary and would be completed as an additional service.

**The tricolored bat is proposed for listing and is not currently afforded protection under the Endangered Species Act (ESA). The tricolored bat faces extinction and is proposed to be classified as endangered due to the range-wide impacts of white-nose syndrome (WNS). Depending on the type of effects a project has on the tricolored bat, the change in the species' status may trigger the need to re-initiate consultation for any actions that are not completed and for which the Federal action agency retains discretion once the new listing determination becomes effective. If this project may result in an incidental take of tricolored bat after the new listing goes into effect, this will need to be addressed in an updated consultation that includes an Incidental Take Statement. If the project requires re-initiation of consultation, additional consultation with the USFWS would be necessary. Any additional consultation with the USFWS would be completed as an additional service.*

- USACE/SCDES – Section 404/401 Permitting
 - Kimley-Horn will prepare field mapping and conduct field reconnaissance of the project area to verify the absence or presence of potential waters of the U.S., including wetlands. The documentation of site conditions will include sub-meter global positioning system (GPS) data collection of wetland boundary flags and stream origin locations.
 - Kimley-Horn will prepare and submit the appropriate 404/401 permit applications (Pre-Construction Notification) to the USACE and South Carolina Department of Environmental Services (SCDES). Kimley-Horn assumes the culvert replacements will qualify for Nationwide Permit (NWP) 3 for maintenance activities and NWP 27 for Aquatic Habitat Restoration, Enhancement, and Establishment Activities.
 - Includes one (1) pre-application meeting with USACE/SCDES staff.

Task 6: Environmental Review

Kimley-Horn will prepare an EA, determinations, and compliance findings for the project per HUD-assisted projects to be in compliance with 24 CFR Part 58 in the HUD Environmental Review Online System (HEROS). It is anticipated that we will coordinate with USACE, USFWS, SC State Historic Preservation Office (SHPO), Tribal Historic Preservation Office (THPO), and EPA, if applicable. This task also assumes

a review of environmental databases, including a comprehensive list of environmental databases to be consulted per HUD (airport hazards, coastal barrier resources, FEMA flood zones, farmland classification, wetlands, sole source aquifer, and Wild and Scenic rivers). The required public involvement will be performed in Task 2 and documented as part of this task. Because this project is partially located within the FEMA 100-year floodplain, the HUD 8-step process will be followed. This will include two (2) additional public notices and is included in Task 2. These notices will be reviewed by SCOR and SCOR will coordinate to have them published in the local paper. It is anticipated that the project will be converted to a Finding of No Significant Impact (FONSI) based on the Environmental Review. If the project converts to FONSI, Kimley-Horn will prepare the Combined Notice of FONSI and Intent to Request for Release of Funds for SCOR to review. Kimley-Horn will also prepare the notice to be published in the local newspaper and will circulate the notice to the regulatory agencies. Kimley-Horn will record public comments during the comment period and will formulate responses to the public comments with the assistance of SCOR. It is anticipated that the ER will begin at the completion of the 30% Design Plan task and it will take approximately 6-months to complete. The final approval must be obtained within 1-year.

Task 7: Construction Administration

Kimley-Horn will provide bid assistance to SCOR. The bid assistance will include responding to three (3) rounds of questions/requests for more information (RFI). We will also attend the pre-bid conference and bid opening. SCOR will compile the bids and review them for completeness and responsiveness. Kimley-Horn will issue applicable addenda and will distribute bid documents as requested by bidders. It is assumed that we will provide up to ten (10) full size sets of plans. It is assumed the SCOR will review the responsive bidder(s) packages to ensure that each bid package is complete and is compliant with HUD procurement requirements (if necessary).

Kimley-Horn will provide limited construction administration. We will attend the pre-construction meeting, up to forty (40) weekly construction coordination calls (up to 1 hour in duration), eight (8) monthly progress meetings (up to 1 hour in duration in addition to travel), and one (3) punch list meetings including at substantial completion, final inspection, and the 10-month warranty. Kimley-Horn will not supervise, direct, or control Contractor's work, and will not have authority to stop the Work or responsibility for the means, methods, techniques, equipment choice and use, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for failure of Contractor to comply with laws. Consultant does not guarantee Contractor's performance and has no responsibility for Contractor's failure to perform in accordance with the Contract Documents.

Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement.

We will provide grant compliance reviews for Davis Bacon and Section 3 reporting, quarterly reporting, and we will review each monthly pay application (up to 8).

Task 7.1 – Kick-Off Meeting – Review to Include Federal Requirements

At this pre-construction conference, Kimley-Horn staff will ensure that all documents specific to Section 3 have been signed and returned.

Task 7.2 – Notice to Proceed

SCOR will issue the notice to proceed to the Contractor. No Kimley-Horn effort is included in this task.

Task 7.3 - Training Requirements – Contractor Staff

- SCOR will provide the training required for the Contractor if necessary. No Kimley-Horn effort is included in this task.

Task 7.4 - Job Site – Grant Specific Requirements

Kimley-Horn staff will take pictures of the following at the job site:

Picture of documents posted at worksite:

- WH-1321 DB poster with DOL contact information
- HUD 4720 Wage Rate Sheet with applicable wage decision with any applicable conformance – if applicable
- Federal Fair Labor Standards Act Poster
- Know Your Rights under South Carolina Employment Laws

Task 7.5 – Federal Project Requirements (Section 3)

Kimley-Horn will collect monthly Section 3 Contractor's reports, Section 3 worker-self-certification forms and Safe Harbor Compliance Forms and will provide them to SCOR. SCOR will load them into the DRGR system for reporting to HUD.

Task 7.6 - Fair Housing (24 CFR Part 5, subpart A)

- Fair Housing is not required, and no Kimley-Horn effort is assumed for this task.

Task 7.7 - Uniform Relocation Assistance (URA)

Projects involving federal funds that require right-of-way, temporary construction easements or staging areas are required to comply with the Uniform Relocation Assistance federal policy. Kimley-Horn staff will ensure prior to the project being bid on and all throughout construction that the project complies with URA and that fair and just compensation is provided for any temporary or permanent easements. It is assumed that this task will not be required, and no Kimley-Horn effort is included. If it is determined that it will apply it can be scoped as an additional service.

Davis-Bacon:

Task 7.8 – Wage Rate Determination

As part of the construction bid process, Kimley-Horn will pull the appropriate wage determinations for the project 10 days prior to advertising, and it will be included in the initial bid package.

Task 7.9 – Wage Rate Determination Verification

Kimley-Horn staff will put the wage rate determinations 10 days prior to bid opening and publish any changes in the final addenda, regardless of whether the rate has changed since the initial bid was advertised to the bid package.

Task 7.10 – Contracting

Should an executed contract not be awarded prior to 90 days, the wage rates will be updated in the contract documents.

Task 7.11 – On-site review

Kimley-Horn staff will verify compliance with the following requirements during the monthly Davis-Bacon interviews

- Wage Rates Posted
- Necessary Labor Posters Posted
- Daily Sign-in
- General/Prime Contractor has list of all employees and subcontractor employees working on site with contact information and last 4 numbers of SS# for identification

Task 7.12 – Payroll Reviews

Kimley-Horn will review, and audit monthly payrolls submitted for compliance by the general/prime contractor for all those working on the project for the following:

Wages paid match with Job duty assigned

- Fringe Calculated Correctly
- Overtime Paid correctly
- Apprentices paid correctly and supporting documentation provided
- Authorized signer on record signed
- Authorized deductions, garnishments, employee loans validated by the employee and authorization on file for payroll deductions
- Any errors returned to the general/prime contractor for correction
- Corrected payrolls provided and re-audited for completeness
- Collect proof that restitution for wages shorted was paid to employees and cashed/deposited by employee

Task 7.13 – Wage Interviews

Kimley-Horn staff will interview the prime contractor and any subcontractors onsite monthly. If no hourly workers are onsite during the interviews, Kimley-Horn will document in a letter to SCOR.

Task 7.14 – Audit of Interviews

Kimley-Horn will conduct an audit of interviews with payrolls from that period, along with confirming that the employee had signed in on site that day as well. Any discrepancies will be shared with SCOR. SCOR will determine the corrective actions required by the Contractor.

Task 7.15 – Discrepancies

Kimley-Horn staff will make an initial attempt to resolve discrepancies with the prime/general contractor. In the event these discrepancies cannot be resolved, Kimley-Horn staff will engage the Town representative to update them on the discrepancies and schedule a meeting to attempt to reach a resolution. In the event a resolution cannot be reached, Kimley-Horn staff will work with Town staff on the processes required by federal law to address and resolve any discrepancies on payrolls, fringe benefits, overtime or interviews.

Task 7.16 – Additional Wage Classifications (additional service, not included in this scope)

Kimley-Horn staff, during the kickoff meeting will identify if any specialized services would be working on site that were not found on the wage rate schedule for this project. Should additional wage classifications be necessary, Kimley-Horn staff will work with the general/prime contractor and/or subcontractor to complete the necessary paperwork to submit to the Department of Labor for the additional wage classification (s) requested.

We will compile and review change order requests using SE-380 forms (up to 3). Kimley-Horn will provide redline markups of the plans that document any field or design changes during construction. No new survey is assumed in this scope of services. We will also provide an Operation and Maintenance (O&M) Plan to SCOR and the Town of Pamplico following the completion of construction. The O&M plan will provide details on ownership, recommended regular and long-term maintenance, and items that should be inspected by the Town, including some typical issues that may be encountered and typical remedies for those issues.

Kimley-Horn may require special inspections or material testing of the Contractor's work and may receive and review certificates of inspections within the Consultant's area of responsibility. Kimley-Horn's review will be solely to determine that the results indicate compliance with the Contract Documents and will not be an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the Contract Documents. Kimley-Horn is entitled to rely on the results of such tests. Inspections and testing services are not included in this scope of services.

Kimley-Horn will respond to reasonable and appropriate up to five (5) Contractor requests for information made in accordance with the Contract Documents and issue necessary clarifications and interpretations. Any orders authorizing variations from the Contract Documents will be made only by Client

Kimley-Horn will review Shop Drawings and Samples and other data which Contractor is required to submit, but only for general conformance with the Contract Documents. Such review and any action taken in response will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders.

Kimley-Horn will, if requested by the Client, render a written decision on all claims of the Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision.

When requested by Contractor and Client, Kimley-Horn will conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list.

Kimley-Horn will conduct a final site visit to evaluate whether the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend final payment to Contractor.

Kimley-Horn will conduct a site visit at 10-months after the final completion visit. We will provide a punch list if applicable or a letter affirming the project is complete.

Kimley-Horn will provide a written letter for the SCOR to sign and submit to HUD a written request to close out the grant no later than 30 calendar days after the Town has drawn down all Grant Funds and completed the Project.

Task 8: Project Management

Kimley-Horn will provide bi-weekly email updated to the Town and SCOR as well as will attend up to nine (9) monthly coordination calls (virtual) to provide progress reports to SCOR. It is assumed that these calls will be up to 1 hour in duration. Kimley-Horn will also attend up to two (2) site visits with SCOR and the Town's staff as needed. It is anticipated that these visits will be up to 1 hour in duration plus travel. Kimley-Horn will provide bi-weekly email updates to the Town and will obtain a business license from the Town. This task also includes schedule updates and invoice preparation.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at Kimley-Horn's then-current hourly rates. Additional services Kimley-Horn can provide include, but are not limited to, the following:

- Utility relocation design and permitting, including water, sewer, and private utilities.
- Easement acquisition and plat preparation
- Structural design (it is assumed that the recommended stormwater components will all be SCDOT standard details)
- Real estate services
- Post construction survey
- Meetings and site visits beyond what is listed above
- Plan updates or redesign based on project budgets or bidding
 - It is assumed that parts of the project may be removed to bring the project within budget, and no redesign is included.
- Construction inspections and testing
- Audit Support

Information Provided By Client

Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives.

Responsibilities of Client

In addition to other responsibilities set out in this Agreement, the Client shall:

- Assist with coordination with the property owners within the project area.
- Provide meeting space for the public meetings.

Schedule

Kimley-Horn will perform the services as expeditiously as practicable with the goal of meeting a mutually agreed upon schedule. It is assumed that the final deliverable will be provided within two hundred and seventy (270) days of notice to proceed.

- Task 1: Data Collection 30 days from NTP
- Task 2: Public Involvement 60 days from NTP
- Task 3: Hydraulic Design 120 days from NTP
- Task 4: Plans and Cost Estimates 270 days from NTP
- Task 5: Permitting 270 days from NTP
- Task 6: Environmental Review 270 days from NTP
- Task 7: Construction Administration 8-month duration (assumed)
- Task 8: Project Management on-going

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1-8 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Milestone Number & Name		Fee	Type
1	Data Collection	\$8,100	Lump Sum
2	Public Involvement	\$15,800	Lump Sum
3	Hydraulic Design	\$16,000	Lump Sum
4	Plans and Cost Estimates	\$42,800	Lump Sum
5	Permitting	\$25,100	Lump Sum
6	Environmental Review	\$29,100	Lump Sum
7	Construction Administration	\$46,000	Lump Sum
8	Project Management	\$17,000	Lump Sum
--	Survey Subconsultant (SAM)	\$63,500	Lump Sum
--	Geotechnical Subconsultant (F&R)	\$19,650	Lump Sum
--	Public Involvement Subconsultant (Flock and Rally)	\$11,000	Lump Sum
Total		\$294,050	

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.