

**CITY OF DALTON  
PUBLIC WORKS DEPARTMENT**

**GENERAL PROFESSIONAL SERVICES AGREEMENT**

THIS GENERAL PROFESSIONAL SERVICES AGREEMENT is made and entered into on this 5 day of October, 2020 by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and Richards and Associates Engineering, Inc., hereinafter referred to as "CONSULTANT".

WHEREAS, the CITY desires to engage the CONSULTANT to provide professional services; and,

WHEREAS, the CITY finds that the proposed Scope of Services and terms of this Contract are acceptable; and,

WHEREAS, the CONSULTANT desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth,

WITNESSETH: That the parties hereto for the considerations hereinafter provided covenant and agree as follows:

1. EMPLOYMENT OF CONSULTANT: The CITY hereby engages the CONSULTANT and the CONSULTANT hereby agrees to perform the professional services hereinafter set forth.

2. PROJECT/SCOPE OF SERVICES: The CONSULTANT shall complete the project and perform the scope of services specified in the CONSULTANT's proposal attached hereto as Exhibit "A".

3. ADDITIONAL SERVICES: The CONSULTANT shall provide additional services, not specifically provided for in Exhibit "A", upon written request and authorization by the CITY.

4. DATE OF COMMENCEMENT: The CONSULTANT shall commence work on the project on October 12, 2020. If no date is provided, then the date of commencement shall be five days from execution of this Agreement.

5. DATE OF COMPLETION: The CONSULTANT shall complete the project on or before November 20, 2020.

6. CONTRACT SUM: The CITY shall pay to CONSULTANT the total sum of

\$ 6,500 Dollars for the complete performance of the project and terms of this Agreement. In addition, CITY shall pay to CONSULTANT for any authorized additional services performed at the rate or amount provided in the Compensation Schedule attached hereto as Exhibit "B".

7. CONTRACT PENALTY: The CONSULTANT shall pay to the CITY the amount of \$ 50 Dollars per calendar day for unexcused delay in completion of the project past the date of completion.

8. PAYMENT: The CITY shall pay the contract sum to CONSULTANT upon complete performance of the project and terms of this Agreement. CONSULTANT shall provide to CITY an Affidavit from the CONSULTANT stating the CONSULTANT has fully performed all terms of the Agreement. Final payment shall be made no later than 30 days after receipt of said Affidavit. Upon completion of any additional services, said additional services shall be paid within 30 days of receipt of invoice from CONSULTANT. Payment(s) shall be made via electronic funds transfer (EFT).

9. CITY COVENANTS: CITY covenants and agrees:

(a) to provide all available information, data, reports, records and maps to which CITY has possession or control which are necessary for CONSULTANT to perform the scope of services provided for herein;

(b) to provide reasonable assistance and cooperation to CONSULTANT in obtaining any information or documentation which are necessary for CONSULTANT to perform the scope of services provided for herein;

(c) to designate a representative authorized to act on the CITY's behalf with respect to the project. Unless otherwise provided, said CITY representative shall be the Director of Public Works;

(d) to permit access to the subject public property and obtain permission to access necessary private property for CONSULTANT to complete the scope of services;

(e) to provide reasonable assistance to CONSULTANT in applying for and obtaining any necessary Federal, State or local government permits for the scope of services;

10. CONSULTANT COVENANTS: CONSULTANT covenants and agrees:

(a) to perform the scope of services in a professional manner, using that degree of care and skill ordinarily exercised by consultants practicing in the same or similar field;

- (b) to use only employees and subcontractors qualified to complete the work with sufficient experience in same or substantially similar projects;
  - (c) to use only properly licensed employees or subcontractors for any work requiring a specialty or professional license issued by the State of Georgia;
  - (d) to designate a representative authorized to act on the CONSULTANT's behalf with respect to the project.
  - (e) to use the subject property in a safe, careful and lawful manner;
  - (f) to promptly report in writing to CITY any unsafe or defective condition of the subject property and any adverse site condition, which shall include but not be limited to limited access, extremely dense vegetation, subsurface conditions, damaged property, or existing utilities, that may adversely affect CONSULTANT's ability to complete the scope of services or other terms of this Agreement;
  - (g) to promptly report in writing to CITY any damage to or injuries sustained on the subject property and to promptly repair any damage to the subject property which is made necessary by any act of CONSULTANT, its employees, agents, subcontractors, or invitees;
  - (h) to keep the subject property in a clean and orderly condition and to remove any personal property of CONSULTANT upon completion of the project;
  - (i) to perform all work on the project in a good and workmanlike manner, free from faults and defects, and in conformance with the terms of this Agreement;
  - (j) to determine the appropriate method, details and means of performing the scope of services provided by this Agreement;
  - (k) to exercise the ordinary standard of care in complying with the laws, codes, and regulations applicable to the CONSULTANT's services;
  - (l) to exercise diligence and to complete delivery of the scope of services in a timely manner consistent with the exercise of due care;
  - (m) to attend meetings to make presentations or to otherwise review the progress of the work as set out in the scope of services at the reasonable request of the CITY;
  - (n) to prepare and submit to the CITY reports required by the scope of services or upon the written request of the CITY.
11. INDEMNITY: CONSULTANT shall indemnify CITY from and hold CITY

harmless against all claims, demands and judgments for loss, damage or injury to person or property, resulting from or incurring by reason of CONSULTANT'S use and occupancy of the subject property or by the negligence, willful acts, or errors or omissions with respect to the performance of the professional services of CONSULTANT, its employees, agents, subcontractors, or invitees and from all expenses incurred by CITY as a result thereof including, without limitation, reasonable attorneys' fees and expenses and court costs, except if arising from or caused by the sole fault or negligence of CITY or any of CITY's employees, agents or representatives acting on behalf of the CITY.

Additionally, pursuant to State law, CITY shall not indemnify or hold harmless CONSULTANT for any claims arising from the actions or omissions of CONSULTANT or any third party.

Additionally, CONSULTANT agrees that all personal property that may be at any time at the subject property shall be at CONSULTANT's sole risk or at the risk of those claiming through CONSULTANT and that CITY shall not be liable for any damage to or loss of such personal property except if arising from or caused by the sole fault or negligence of CITY.

12. INSURANCE: CONSULTANT agrees to carry at its own expense through the term of this Agreement the types and amounts of insurance required to maintain status as a Vendor of the City of Dalton or as provided herein below, whichever is greater. CONSULTANT shall provide CITY with copies or evidence of such insurance coverage prior to the commencement date of the Agreement. Such insurance policies shall name CITY as an additional insured and shall be issued by such insurance companies and on such forms as may be approved by CITY. Said insurance shall include the following:

- (a) General Liability Coverage - General Liability policy with a minimum limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (b) Workers' Compensation Coverage – Workers' Compensation policy with the following minimum limits:
  - (1) Workers' Compensation statutory limits;
  - (2) Employer's Liability:
    - a. Bodily Injury by Accident - \$100,000.00
    - b. Bodily Injury by Disease - \$500,000.00 policy limit
    - c. Bodily Injury by Disease - \$100,000.00 each employee.

CONSULTANT shall complete the Workers' Compensation Insurance Affidavit of the City of Dalton to determine if any exemption to Workers' Compensation Insurance is applicable.

- (c) Auto Liability Coverage – Auto Liability policy with a minimum of \$1,000,000.00 limit per occurrence for bodily injury and property damage, if motor vehicle is used in performance of scope of services. Comprehensive form covering all owned, non-owned, and hired vehicles.

(d) Professional Services Errors & Omissions Coverage – Professional Services E&O policy with a minimum of \$1,000,000.00 per claim.

14. ASSIGNMENT: CONSULTANT may not assign all or any portion of the Agreement without the prior written permission of CITY.

15. SUBCONTRACTOR: The CONSULTANT shall provide written notice to CITY of CONSULTANT'S intent to use a subcontractor for any portion of the project. CITY shall be entitled to reject any subcontractor it deems not qualified to complete the project. Any subcontractor approved for work on the project shall abide by any and all terms of this Agreement.

16. NON-WAIVER OF DEFAULT: The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Agreement shall not be construed to be a waiver thereof, not affect the validity of any part of this Agreement or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of the Agreement shall be held to be a waiver of any other default and breach.

17. NOTICES: Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced in writing and delivered in person or mailed by certified mail, return receipt requested, postage prepaid to the party who is to receive such notice.

Such notice to CITY shall be mailed to: City of Dalton  
ATTN: City Administrator  
P.O. Box 1205  
Dalton, GA 30722-1205

Such notice to CONSULTANT shall be mailed to: Richards & Associates Engineering, Inc.  
P.O. Box 220  
Chatsworth, GA 30705

When so mailed, the notice shall be deemed to have been given as of third (3rd) day after the date it was mailed. The addresses may be changed by giving written notice thereof to the other party.

18. CONTRACT DOCUMENTS: The Agreement shall include the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Addenda relating to bidding and proposal requirements, and any other written information provided by the CITY in anticipation of receiving bids or proposals, if any, except as specifically excluded herein, and the CONSULTANT'S bid or proposal. The terms of this Agreement shall supersede any terms in the above-referenced documents in direct conflict with the terms of this Agreement.

Additionally, the Contract Documents and all drawings, plans, specifications and other related construction or service related documents shall be the sole property of the CITY. The CONSULTANT shall be permitted to retain copies thereof for its records and for its future professional services.

Additionally, CITY shall be authorized to rely upon all documents, whether in hard copy or electronic format, provided by CONSULTANT. Any changes to the material terms of any document shall be clearly identified and noted to CITY.

19. VENDOR: CONSULTANT shall register and remain active as a Vendor of the CITY by completing the City of Dalton Vendor Packet and fully comply with any and all requirements of said Vendor during the term of this Agreement.

20. TERMINATION OF CONTRACT: In the event that CONSULTANT defaults or neglects to perform work on the project in accordance with the terms of this Agreement, CITY may terminate this Agreement by providing written notice of termination. Prior to termination of this Agreement for default, CITY shall provide written notice to CONSULTANT of any default and provide CONSULTANT ten (10) days to correct said default or deficiency,

21. MISCELLANEOUS PROVISIONS:

(a) Governing Law; Venue. This Agreement is being executed and delivered in the State of Georgia and shall be construed and enforced in accordance with the laws of that state. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive any and all objections or defenses thereto.

(b) Successors and Assigns. This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. CONSULTANT shall not assign its rights or obligations under this Agreement without the prior written consent of the CITY.

(c) Severability of Invalid Provisions. If any provision of this Agreement shall be deemed invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

(d) Complete Agreement; Amendments. This Agreement constitutes the entire agreement between the parties hereto; it supersedes all previous understandings and agreements between the parties, if any, and no oral or implied representation or understanding shall vary its terms, and it may not be amended except by written instrument executed by both parties hereto.

(e) Remedies Cumulative. All rights, powers, and privileges conferred hereunder upon the parties hereto shall be cumulative, but not restrictive to those given by law.

(f) Time is of the Essence. Time is of the essence of this Agreement in each and all of

its provisions.

(g) Attorney Fees. In the event the CITY must enforce the terms of this Agreement by filing a civil action against CONSULTANT, then CONSULTANT shall pay an amount equal to fifteen percent (15%) of the contract sum as attorney fees.

(h) Confidentiality. All information and documentation regarding the project and the CONSULTANT's services shall be maintained in confidence and shall not be disclosed to any third party by CONSULTANT, without CITY's written authorization, except as may be required by the Georgia Open Records Act. CONSULTANT shall promptly notify CITY of any third party request for said information or documentation prior to any disclosure. CITY agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by CONSULTANT pertaining to this Agreement shall be considered confidential and proprietary, and shall not be disclosed to any third party, except as may be required by the Georgia Open Records Act.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CONSULTANT:

CONSULTANT:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

CITY:

CITY OF DALTON, GEORGIA

By: \_\_\_\_\_

MAYOR

Attest: \_\_\_\_\_

CITY CLERK

# **EXHIBIT 'A'**



Richards & Associates Engineering, Inc.  
PO Box 220  
Chatsworth, GA 30705  
(706) 695-0661

September 18, 2020

Mr. Andrew Parker  
Public Works Department  
Dalton, GA

Re: Proposal for Site Design Services  
915 Brookwood Drive  
Dalton, GA

01 Site Design \$6,500

Richards & Associates Engineering, Inc. (RAE) will use the topographic survey prepared by Lowry & Associates to design and prepare construction drawings for a pond and storm sewer relocation to help mitigate local flooding near the intersection of Brookwood Drive and Lakemont Drive. This will include a Grading and Drainage Plan, Erosion Control Design, and construction details.

We will design the pond to maximize the mitigation using the available area on the lot at 915 Brookwood Drive. The pond will be designed to allow flood water to enter and exit and will not be designed as a detention pond.

We will prepare an Erosion, Sedimentation and Pollution Control Plan as required by The City of Dalton per the Manual for Erosion and Sediment Control in Georgia. This project is expected to be less and 1.0 acre and therefore will not be subject to the requirements of the National Pollution Discharge Elimination System (NPDES).

We will visit the site two (2) times during construction. All other requested visits will be billed hourly per the attached fee schedule.

The following are excluded from this contract:

- Topographic Survey
- Asbuilt Survey
- Wetland investigation
- Geotechnical investigation
- Phase 1 ESA
- Permitting/review fees
- Structural design
- Construction staking
- Plan copies

Richards & Associates Engineering, Inc.  
Proposal for Site Design Services  
915 Brookwood Drive  
Dalton, GA

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If you find this proposal acceptable, please sign the bottom of the first sheet and return a copy of it to our office along with the required retainer.

Accepted by: \_\_\_\_\_

Client: \_\_\_\_\_ Date: \_\_\_\_\_

**Client agrees to the Standard Terms and Conditions set forth on the attached sheet.**

Richards & Associates Engineering, Inc.  
Proposal for Site Design Services  
915 Brookwood Drive  
Dalton, GA

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**STANDARD TERMS AND CONDITIONS**

- This proposal shall be good for a period of sixty (60) days.
- If this proposal is acceptable, the Owner shall sign where indicated or respond to Richards & Associates Engineering, Inc. (RAE) with a written Notice To Proceed. This shall constitute a legal and binding contract between the Owner and RAE.
- RAE maintains Professional Liability and General Liability insurance for work performed by RAE only. Client/Owner agrees to hold any claim against RAE to a maximum of \$25,000 or the contract amount, whichever is less. Client/Owner agrees to Hold Harmless RAE for services provided by subcontractors.
- Owner agrees to indemnify and hold harmless individual employees, officers or directors of RAE against claims associated with this project. Owner agrees that any claim shall be directed and/or asserted against RAE and not against any or RAE's employees, officers or directors.
- Due to the nature of the project and unforeseen subsurface conditions, Client/Owner agrees to Hold Harmless RAE and its subcontractors for engineering design related issues presented during construction as a result of unforeseen conditions. RAE and its subcontractors will work with Client/Owner and the contractor to rectify any problem presented during construction within the original scope of work. Issues presented during construction that fall outside the original scope of work will be billed at an hourly rate.
- RAE will complete the work as described in the contract in a timely manner unless delayed. Delays may include stopping work at the Client/Owner's request, lack of information, design changes or other factors beyond the control of RAE.
- The Owner, by signing this contract, assures that RAE and its subcontractors have permission to work on the subject property and have the right to access the property. RAE may access the property to investigate and gather information pertinent to the design. RAE may utilize hand tools such as machetes and shovels to clear light brush and excavate shallow utilities or structures.
- Owner shall furnish all relevant information concerning the site to RAE. This includes plats, reports, restrictive covenants, etc...
- RAE agrees to provide engineering services under the direction of the Client/Owner. RAE will provide Construction Documents based on sound, industry standard engineering practice for use by the Client/Owner. RAE does not guarantee that the design will be permitted by the local, state or federal agencies that may review the documents. Owner is responsible for obtaining all permits required prior to commencing construction operations.
- At the request of the Client/Owner, RAE may show improvements on adjacent property or within proposed easements or on property not currently held by the Owner. The Client/Owner is responsible for ensuring that all construction occurs on real estate or legal easements held by the Owner.
- RAE will produce the original plots, signed and sealed to remain at the office of RAE. All paper copies will be provided via Dalton Print Shop for \$3.00 each. PDF copies will be provided at no cost.
- All documents prepared by RAE will remain the property of RAE and may not be copied, reproduced or distributed without the express written consent of RAE.
- RAE will invoice Reimbursable Expenses to the Owner with a 10% markup. Reimbursable Expenses include any out-of-pocket expenses incurred by RAE on behalf of the Owner, such as, but not limited to the following: mileage, shipping fees, etc...
- The Client/Owner shall furnish RAE with any specialized billing procedures. RAE will invoice per the invoice schedule set forth in the contract.
- Payment is due immediately upon receipt of the invoice. After 30 days, the Client/Owner agrees to pay 1.5% late fee per month on unpaid balances.
- Failure to pay within 45 days from the date of the invoice will be considered by RAE to be a breach of contract and RAE may cease work and hold all work without penalty from the Client/Owner.

## STANDARD FEE SCHEDULE

<u>Position</u>	<u>Hourly fee</u>
Professional Engineer	\$150
CAD Draftsman	\$90
Clerical	\$50

  

<u>Reimbursable expense</u>	<u>Rate</u>
Mileage	\$0.60/mi
Shipping	cost + 10%
Other expenses	cost + 10%