

## CONTRACT FOR SERVICES

This CONTRACT for Wastewater Condition Assessment and Asset Management (WKD#TBD) by and between Town of Pittsboro, hereinafter called the OWNER, and W.K. Dickson & Co., Inc., hereinafter called the CONSULTANT;

The parties hereto do mutually agree as follows:

1. Employment of CONSULTANT. The OWNER hereby engages the CONSULTANT and the CONSULTANT hereby agrees to perform the professional services hereinafter set forth.
2. Scope of Services. The CONSULTANT shall perform, in a professional manner, the services set forth in Attachment A, Scope of Services, which attachment is incorporated herein.
3. Additional Services. The CONSULTANT shall provide additional services, not specifically called for in Attachment A, Scope of Services, upon written authorization of the OWNER.
4. Time of Performance. The CONSULTANT will commence work on or as soon as practicable after the date of execution of this Contract and receipt of written Notice to Proceed. All work as set forth in the Scope of Services shall be completed as shown in the Project Schedule in Attachment A, assuming: (i) the timely submission of all required data and the scheduling of all meetings and reviews by the OWNER; (ii) no other impacts or delays caused by third parties, including the contractor(s) or its subcontractors; or (iii) other delays beyond CONSULTANT's control.

If the OWNER requests modifications to the Scope of Services of the Project, or if CONSULTANT's services extend past the completion date above, through no fault of the CONSULTANT, the CONSULTANT's compensation shall be paid as an additional service as set forth in Attachment B, Basis of Compensation, and CONSULTANT's time of performance shall be extended appropriately.

CONSULTANT's services under this Contract, and each phase of services, if the Scope of Services is so divided, shall be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by the OWNER or (2) thirty days after the date when such submissions are delivered to the OWNER.

5. Compensation. The CONSULTANT agrees to perform the services provided for in the Scope of Services, and the OWNER agrees to compensate the CONSULTANT for such services as set forth in Attachment B, Basis of Compensation, which attachment is incorporated herein. Compensation for additional services shall also be as set forth in Attachment B, Basis of Compensation.

Payment by the OWNER to the CONSULTANT shall be due and payable on the 25th day of the month following the date of the invoice. Payments not received by the CONSULTANT by said 30th day of the month following the date of the invoice shall be overdue. A service charge of one and one-half (1½) percent per month shall be added to all overdue amounts. OWNER agrees to pay CONSULTANT's cost of collection of all amounts due and unpaid including court costs and

reasonable attorney fees. CONSULTANT shall not be bound by any provision wherein CONSULTANT waives any rights to a mechanic's lien, or any provision implying payment to CONSULTANT is contingent upon payment to OWNER by a third party. A failure by OWNER to pay CONSULTANT on a timely basis shall entitle CONSULTANT at its election, to stop work on the Project until such time as payment has been made, or upon seven days' notice and OWNER's failure to pay all amounts then due, to terminate this contract. Such suspension or termination shall be deemed for cause.

6. Personnel. The CONSULTANT represents that he has, or will secure at his own expense, all personnel required to perform the services under this Contract and that such personnel will be fully qualified to perform such services.
7. Subsurface Investigations. In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test locations and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total project cost and/or execution. These unforeseen conditions are not the responsibility of the CONSULTANT, and CONSULTANT does not make any opinions or representations regarding, or assume any liability for, conditions outside the actual locations or areas tested, observed or explored.
8. CONSULTANT's Personnel at Construction Site. The presence or duties of CONSULTANT's personnel at a construction site, whether as onsite representatives or otherwise, do not make CONSULTANT or CONSULTANT's personnel in any way responsible for those duties that belong to OWNER and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health or safety precautions required by such construction work. CONSULTANT and CONSULTANT's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except the CONSULTANT's own personnel.

The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to OWNER a greater degree of confidence that the completed work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction contractor(s). CONSULTANT neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform their work in accordance with the Contract Documents.

9. Responsibilities of the OWNER. It is agreed that the OWNER will have the following responsibilities under this Contract:

- a. The timely provision of all available information, data, reports, records, and maps to which the OWNER has access and which are needed by the CONSULTANT for the performance of the services provided for herein.
- b. Providing assistance and cooperation for the CONSULTANT in obtaining any other needed material which the OWNER does not have in its possession.
- c. Making available the services of the OWNER as may be necessary to obtain information as needed to perform the work program set forth in the Scope of Services.
- d. The designation of a single representative who will be authorized to make necessary decisions required on behalf of the OWNER and will serve to provide the necessary direction and coordination for the project.
- e. Bear all costs for permitting, reviewing, recording and advertising for the project.
- f. Provide access to all affected private property for CONSULTANT to perform all necessary surveying, engineering and inspections.
- g. Provide a "Clear Site Certification" from legal counsel that OWNER has legal right to undisturbed use of the total project site for the entire life of the project.

All such OWNER responsibilities shall be conducted in a timely manner and without undue delay so as not to delay the CONSULTANT in the performance of his services.

10. Opinion of Probable Construction Costs. CONSULTANT's opinion of probable construction costs, if rendered as a service under this Agreement, is based on assumed labor costs and approximate quantities of material and equipment, and therefore is of a conditional character. CONSULTANT cannot and does not guarantee the cost of work to be performed by others since market or bidding conditions can change at any time and changes in the scope or quality of the project may affect estimates. OWNER waives and releases CONSULTANT from any loss, liability or claim arising out of or in any way related to CONSULTANT's opinion of probable construction costs.
11. Ownership of Documents. All documents prepared or furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's professional service, and CONSULTANT shall retain an ownership and property interest therein, including all copyrights. CONSULTANT grants OWNER a license to use instruments of CONSULTANT's professional service for the purpose of constructing, occupying or maintaining the project. Reuse or modification of any such documents by OWNER, without CONSULTANT's written permission, shall be at OWNER's sole risk, and OWNER agrees to indemnify and hold CONSULTANT harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by OWNER or by others acting through OWNER. Documents are defined as reports, drawings, specifications, record drawings, plats and other deliverables defined in the scope of work whether in printed or electronic format.
12. Use of Electronic Media. Copies of documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Files in

electronic formats, or other types of information furnished by CONSULTANT to OWNER such as text, data or graphics, are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic formats, CONSULTANT makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by CONSULTANT at the beginning of this project.

13. Changes. The OWNER or the CONSULTANT may, from time to time, request modifications or changes in the Scope of Services. Such changes, including any increase or decrease in the amount of the CONSULTANT's compensation or time of performance, which are mutually agreed upon by and between the OWNER and the CONSULTANT, shall be incorporated in written amendments (Attachment C), and compensated for as additional services as set forth in Attachment B.
14. Termination of Contract. This Contract may be terminated by either the OWNER or the CONSULTANT, with or without cause, upon 7 calendar days written notice. In the event of a termination by OWNER for cause or by CONSULTANT without cause, copies of all finished or unfinished plans, specifications and reports prepared by the CONSULTANT shall, at the option of the OWNER, be made available, provided CONSULTANT is paid in full for all services provided and expenses incurred through the date of termination and otherwise as provided for in paragraph 11. If termination is by CONSULTANT for cause, the license granted OWNER pursuant to paragraph 11 shall terminate, and no rights for continued use or copies of documents shall inure to OWNER, but the CONSULTANT shall be entitled to receive compensation for work accomplished including reimbursable expenses incurred prior to termination.
15. Assignability. This Contract shall not be assigned or transferred by either the CONSULTANT or the OWNER without the prior written consent of the other. Notwithstanding the foregoing, however, the CONSULTANT shall not be prohibited from contracting with qualified sub-consultants or from assigning to a bank, trust company, or other financial institution any claims for compensation due, or to become due, without such prior written consent.
16. Insurance. CONSULTANT shall provide and maintain at a minimum the following coverage and limits during the life of the contract:
  - a. Statutory Workers Compensation Insurance, a minimum of \$500,000 or greater amount if required by the state(s) in which the work is to be performed.
  - b. Commercial General Liability Insurance, including coverage for premises and operations, products and completed operations, independent contractors, and contractual liability. Such insurance shall be not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
  - c. Automobile Liability Insurance for all owned, hired and non-owned automobiles in the minimum amount of \$1,000,000 per occurrence.
  - d. Professional Liability Insurance of \$1,000,000 per claim.

17. Indemnification. CONSULTANT and OWNER each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused or alleged to have been caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of CONSULTANT and OWNER, they shall be borne by each party in proportion to its negligence.

18. Liability and Standard of Care. CONSULTANT shall perform services for OWNER using that degree of care and skill ordinarily exercised by consultants practicing in the same or similar locale as the project, on projects of a similar scope and nature. CONSULTANT's liability to OWNER for any damages arising in any way out of performance or breach of this contract or breach of CONSULTANT's standard of care, is limited to the net proceeds recoverable under CONSULTANT's Professional Liability Insurance policy identified in paragraph 16d, "net proceeds recoverable" being defined as the proceeds payable under the policy after deductions for expenses, attorney's fees or other claims paid under such policy. In no event shall either OWNER or CONSULTANT be entitled to consequential damages.

OWNER acknowledges that the CONSULTANT is a Corporation and agrees that any claim made by the OWNER arising out of any act or omission of any director, officer or employee of the CONSULTANT in the execution or performance of this agreement shall be made against the CONSULTANT and not against such director, officer, or employee and OWNER waives any claim against all of CONSULTANT's directors, shareholders, officers and employees.

19. Dispute Resolution. If a dispute greater than \$10,000 arises out of or relates to this contract, or the breach thereof, and if this dispute cannot be settled through negotiation, the parties agree first, prior to litigation or any other form of dispute resolution, to try in good faith to settle the dispute by mediation. The parties shall first attempt to select a mutually acceptable mediator, and if the parties agree upon a mediator, the mediation shall be conducted in accordance with the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions, then in effect, or as the parties may otherwise agree. If the parties cannot agree upon a mediator, the selection of a mediator and the mediation process shall be conducted by the American Arbitration Association under its then current Construction Industry Arbitration Rules and Mediation Procedures. The venue for the mediation shall be in Charlotte, North Carolina, unless the parties otherwise agree.

20. Miscellaneous Provisions. The following miscellaneous provisions shall apply:

- a. This Agreement shall be binding upon the successors and assigns of the parties.
- b. Interpretation and enforcement of this Agreement shall be pursuant to the law of the State of North Carolina. Venue for any litigation under or related to this Agreement shall be in the courts of Mecklenburg County, North Carolina.

- c. This Agreement constitutes the entire contract between the parties, and it shall be modified or amended only in a writing signed by both parties.

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

OWNER:

TOWN OF PITTSBORO

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

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

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

CONSULTANT:

W.K. DICKSON & CO., INC.

By: Bryan R Odom

BRYAN R. ODOM

Title: VICE PRESIDENT

Date: 10/7/2016

This instrument has been preaudited in the manner required by the "Local Government Budget and Fiscal Control Act".

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

Finance Officer

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

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices:

720 Corporate Center Drive  
Raleigh, NC 27607

Designated Representative:

Name: \_\_\_\_\_

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

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Designated Representative:

Name: Bryan R. Odom

Title: Vice President

Phone: 919.606.6071

E-mail: bodom@wkdickson.com

**ATTACHMENT A**  
**SCOPE OF SERVICES**

In July of 2016 the Town of Pittsboro was awarded an Asset Inventory and Assessment (AIA) Grant by the State Water Infrastructure Authority. The AIA grant of \$150,000 is to be matched by \$30,000 in funds from the Town. The grant and matching funds will be used to:

- perform condition assessment in the collection system
- to complete the development of asset management and prioritization programs that the Town has already begun to develop
- to make updates and improvements to the Town’s gravity sewer collection inventory and database; and
- utilize the information to prepare an updated list of prioritized project needs in the sewer system.

This will support the Town in addressing several of its greatest challenges in the sewer system as previously outlined in the AIA grant application

**Task 1: Sewer Collection Asset Inventory Improvements and Updates**

The Town and WK Dickson have identified some updates and improvements that are needed in the data in the GIS database, including adjustments to current attribute information. For example, the recent condition assessment information that was gathered in paper form by the Town in its 2015/2016 I&I reduction project will be incorporated into the inventory for further use in Tasks 3, 4 and 5. In the course of developing a preliminary asset prioritization tool in GIS, WK Dickson determined that a number of asset attributes are lacking in the database and require updating. This may come from as-built or other sources of information that the Town already possesses but have not yet been incorporated into the GIS inventory. These updates are needed to provide for an adequate inventory of the collection system, and to provide the Town with the ability to utilize the information effectively in creating and enhanced and prioritized CIP. WK Dickson will work with the Town to incorporate this information and update the sewer asset inventory in GIS.

**Task 2: Sewer Collection System Condition Assessment**

The project will set aside a budget amount for condition assessment to be used in the most effective manner to evaluate sources of inflow and infiltration in the collection system. This Additionally, the budget allows for ultrasonic thickness testing of cast iron or ductile iron force mains at 13-15 locations throughout the system. For the purposes of establishing a budget for the condition assessment effort, the estimated scope is:

Force Main Ultrasonic Thickness Testing:	12-15 locations
Night Time Flow Isolation:	30 locations
NASSCO Level 1 Manhole Inspections:	150 manholes
Smoke Testing:	15,500 linear feet of gravity line

The night time flow isolation work will be utilized to better target areas where the manhole inspections and smoke testing are more likely to locate I&I sources. The field condition assessment would also be

focused on areas outside of the recent I&I project area that the Town investigated in 2015/2016. We expect to begin the field condition assessment in the winter months of 2016/2017 when wet weather conditions are more prevalent. WK Dickson will gather the condition assessment information and incorporate it into the asset inventory so that the Prioritization, Cost and CIP planning tools can evaluate the new information.

### **Task 3: Complete and Implement Sewer Collection System Asset Prioritization Tool in GIS**

The Town has already developed a preliminary version of a non-proprietary GIS-based prioritization tool that can be used to quickly evaluate the likelihood and consequence of failure of each asset in the sewer collection system, and to prioritize condition assessment rehabilitation, replacement and repair needs in the system. The preliminary tool incorporated just a few attributes in evaluating the likelihood and consequence of failure, and therefore total risk or criticality, of each asset in the inventory. In this task, WK Dickson will complete the development of the non-proprietary GIS-based prioritization tool to prioritize needs in the sewer collection system. Pittsboro will be able to utilize the tool on an on-going basis as inventory and condition assessment data is continuously updated on into the future. As a result, the Town will be able to quickly and consistently prepare a subjective list of prioritized needs in the system. The data developed in Tasks 1 and 2 will be used in the development and application of the prioritization tool in Task 3. WK Dickson will meet with Town staff to develop all of the criteria that will be used in establishing likelihood, consequence and total criticality scores for the assets, and rating criteria that are specific to the Town's inventory. WK Dickson will run the tool on the newly developed inventory and provide a prioritized list of potential needs in the system. We will also work with the Town to establish a standard operating procedure for ongoing use and maintenance of the tool by Town staff.

### **Task 4: Sewer Collection System Cost Planning and CIP Tool**

In this task, WK Dickson will develop a non-proprietary GIS-based cost planning tool that will integrate with the existing sewer collection system prioritization tool. The Cost Planning tool will aid in determining budgetary estimates for condition assessment, rehabilitation, replacement and repair (R/R/R) alternatives for the prioritized assets. The Town will be able to update cost information for the tool going forward. The CIP Tool will outline a decision matrix for expediting the process of evaluating the benefit of any one of the R/R/R strategies as condition assessment information is gathered in the collection system and incorporated into the GIS database and inventory. As a result, the Cost and CIP Planning tools will combine to produce an automated list of recommendations and planning level cost estimates to address deficiencies in the system. This will allow the Town to review the results of the CIP tool and focus time and effort on the assets that are deemed most critical. Additionally, it can create an enhanced CIP that projects system needs and costs for a longer planning period into the future.

### **Task 5: Enhanced CIP Development & Reporting**

WK Dickson will utilize the results of the Tasks 1 through 7 to assist the Town in developing an updated and enhanced list of prioritized rehabilitation, replacement and repair needs in the system. Capital and O&M projects will be outlined in a multi-year plan with preliminary cost estimates. WK Dickson will prepare a summary report of the CIP and project results, and recommendations for on-going improvements to the Town's asset management program.

**Task 6: Work Order Process and Data Maintenance Improvements**

Pittsboro has already invested in a work order management system to better track and facilitate needs in the sewer collection system. Additionally, the Town wants to enhance its ability to sustainably gather inventory and condition assessment information in the system with its own resources, rather than relying on outside consultants in almost every instance. However, the system is very new to the Town, and they need assistance in developing protocols and procedures to ensure that the information being gathered by its staff is being incorporated into the overall data management process. They also need assistance in developing procedures to expedite maintenance or repair responses when critical issues are identified in the work order process, especially those that are likely contributing to the peak wet weather flows.

WK Dickson will assist the Town in the development and implementation of these protocols as a part of the larger goal of creating a sustainable asset management program, tailoring proven solutions to the Town's needs. The protocols will be developed, documented and reviewed with Town staff. The Town will be able to verify the positive results resulting from the implementation of the protocols by tracking specific operational benchmarks, which will be outlined and clarified during the development of these protocols.

**Time of Performance:**

WK Dickson shall begin work upon execution of this Statement of Work and shall complete performance of the services described above by no later than the dates outlined in the following schedule:

Task 1:	180 days from Notice to Proceed (NTP)
Task 2:	270 days from NTP
Task 3:	270 days from NTP
Task 4:	270 days from NTP
Task 5:	360 days from NTP
Task 6:	270 days from NTP

**ATTACHMENT B**

**BASIS OF COMPENSATION**

1. **Basic Services.** The OWNER shall pay the CONSULTANT for services set forth in Attachment A, Scope of Services, a Lump Sum Fee of one hundred seventy-eight thousand dollars (\$178,00.00).

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

The lump sum fee is broken down by task as follows:

<b>Phase Description</b>	<b>Total Cost Amount</b>
Task 1: Sewer Collection Asset Inventory Improvements and Updates	\$ 21,200
Task 2: Sewer Collection System Condition Assessment	\$ 57,000
Task 3: Complete and Implement Sewer Collection System Asset Prioritization Tool in GIS	\$ 30,000
Task 4: Sewer Collection System Cost Planning and CIP Tool	\$ 27,000
Task 5: Enhanced CIP Development & Reporting	\$ 24,000
Task 6: Work Order Process and Data Maintenance Improvements	\$ 18,800
<b>Total Project Costs</b>	<b>\$178,000</b>

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