

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, ALABAMA as follows:

SECTION 1. That the contract with Stewart Engineering, Inc., a copy of which is attached hereto, to provide electrical engineering and drafting services on an as needed basis for the Florence Utilities Electricity Department based on the Fee Schedule dated January 1, 2024. The same is hereby approved, ratified and confirmed.

SECTION 2. That the Council has investigated and ascertained and hereby finds Stewart Engineering, Inc., to be qualified, responsible, and competent to perform said services.

SECTION 3. That the contract for such services be awarded to Stewart Engineering, Inc., and that the proper officials of the City execute the contract in the name of and on behalf of said City.

ADOPTED this the _____ day of _____, 2025.

CITY COUNCIL

APPROVED this the _____ day of _____, 2025.

MAYOR

ADOPTED & APPROVED this the _____ day of _____, 2025.

CITY CLERK - TREASURER

SCHEDULE A

Standard Hourly Billing Rate

EFFECTIVE:
January 1, 2024

BASIC SERVICE (Hourly Rates)

Professional Engineer	\$	180.00
Electrical Engineer	\$	150.00
Engineering Aide I	\$	140.00
Engineering Aide II	\$	105.00
Inspector	\$	110.00
CAD Operator (Maximum)	\$	85.00
CAD Operator (Minimum)	\$	60.00
Secretary	\$	105.00

REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to the fees for Basic Service. Reimbursables include actual expenditures made by the ENGINEER, his employees, or his consultants in the interest of the Project and are the expenses listed in the following subparagraphs:

Expense of transportation, at the IRS approved rate. Actual subsistence and lodging expenses when traveling in connection with the Project.

Fees paid for securing approval of regulatory agencies having jurisdiction over the Project.

When authorized in advance by the OWNER, the expenses of any premium portion of the overtime services at premium rates; the cost of preparing perspectives or models for the OWNER'S use; and authorized expenses incurred for performing any service that is normally the OWNER'S responsibility, including required legal advertisements for Bid Projects.

ENGINEERING SERVICES AGREEMENT

AGREEMENT made as of May 1, 2025, between the City of Florence, Alabama (hereinafter called the "Owner") and Stewart Engineering, Inc. (hereinafter called the "Engineer").

WHEREAS, the Owner owns and operates an electric distribution system (hereinafter called the "System"); and

WHEREAS, the Engineer represents that Engineer has sufficient experienced personnel and equipment to perform, and the Owner desires the Engineer to perform the engineering services herein described in respect of the System.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and undertakings herein contained the Owner and the Engineer agree as follows:

ARTICLE I

GENERAL SCOPE

The Engineer shall render diligently and completely the engineering services herein, and subsequently, described

ARTICLE II

PROJECTS

WITNESSETH, that whereas, the Owner intends to engage the Engineer to perform professional services for specific projects as assigned ("Project"). Each project shall be defined, scoped and budgeted by the Owner with the issuance of a specific Work Order referencing and incorporating the terms of this Agreement, and the Engineer will perform services as outlined below.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and undertakings herein contained the Owner and the Engineer agree as follows:

ARTICLE III

BASIC SERVICES

The Engineer agrees to perform, for the above-mentioned Work, the basic professional services, A, and B, and C, and D, and E, either individually or all of some parts thereof as hereinafter defined:

- A. Consultation, preliminary research, analysis, preparation and furnishing of schematic drawings.
- B. Preparation and furnishing of preliminary plans, outline specifications and estimates of cost.
- C. Preparation and furnishing of working drawings and specifications necessary for Contract purposes including sufficient proposal, contract, bid, and bond forms for reimbursement for cost of the reproduction; also, the advertisement, pre-qualification, procuring and analysis of bids in compliance with Alabama law, when requested by the Owner. If additional sets of the contract documents are required, the Owner will pay the cost thereof, except those where cost of reproduction was paid by the recipient, upon submittal by the Engineer of a certified tabulation showing the number of sets reproduced and the disposition of same.
- D. Preparation of contract administration documents, e.g., change orders, preparation of details and explanatory drawings, providing instructions necessary for the proper execution of the Work, and checking and approval of manufacturer's data and shop drawings.
- E. General administration of the construction contract, issuing of certificates of payment, change orders, certificates of completion and preparation of construction records.

The Engineer shall furnish the Owner an estimate of the Cost of the Work based upon the approved preliminary drawings and outline specifications. The required written approval by the Owner of this estimate and preliminary drawings and outline specifications by the Owner and all public agencies involved will constitute authority for the Engineer to proceed with the completion of final plans and specifications.

If, after the approval of the preliminary drawings and prior to the completion of the final plans and specifications, unforeseen conditions should arise which would substantially affect the Cost of Work, or should the Owner require substantial changes from the approved preliminary drawings and specifications, the Engineer may submit in writing to the Owner an accordingly revised estimate which, upon approval, shall supersede the approved preliminary estimate and shall become the agreed budget amount.

ARTICLE IV

COMMENCEMENT AND COMPLETION OF SERVICES

Time is of the essence with regard to Engineer's performance under this Agreement. Engineer shall diligently pursue the completion of its services, and coordinate its services with other services being performed on the Project by Owner and/or other consultants so that its services or the services of others shall not be delayed or impaired by any act or omission of Engineer. Owner may prepare a coordinated progress schedule for the benefit of Owner and all consultants, and if it does so, Engineer is required to perform its services in accordance with such schedule or as it may be modified by Owner as the Project progresses.

ARTICLE V

BASIC FEES

For all hourly paid services, the Owner agrees to pay the Engineer for the basic services in this Agreement according to the attached schedule of fees, designated as Schedule A.

For all fixed fee projects, the Owner agrees to pay the Engineer for the basic services in this Agreement the following percentages of the Engineering Fee:

- For A. Ten per cent of the Engineering Fee.
- For B. Fifteen per cent of the Engineering Fee.
- For C. Fifty per cent of the Engineering Fee.
- For D. Five per cent of the Engineering Fee.
- For E. Twenty per cent of the Engineering Fee.

The schedule of Engineering Fee Rates shall be as negotiated, but never less than that published by the State of Alabama Building Commission, the latest edition. The work covered by this Agreement is assigned to Group III covering Electrical Substation and Primary Distribution Systems of the above publication.

ARTICLE VI

PAYMENTS

From time to time during the execution of its work and in proportion to the amount of service rendered by the Engineer on account of Services A, B, C, D or E in this Agreement, payments shall be made to the Engineer for satisfactorily completed services according to the agreed schedule of fees and upon receipt of a properly itemized, certified and documented invoice.

Monthly invoices will be issued by Engineer for all services performed under the terms of this Agreement. Invoices are due and payable net 30 days. Owner agrees to pay interest at the rate of 1½% per month on all past-due amounts, unless not permitted by law. Any interest charged or collected in excess of the highest legal rate will be applied to the principal amount owing to Engineer, and if such interest exceeds the principal balance of Owner's indebtedness to Engineer, will be returned to Owner.

Upon satisfactory completion of construction work and its final acceptance by the Owner, the Engineer shall be paid any unpaid balance of fee due hereunder. Prior to such final payment under this contract or prior to settlement upon termination of the contract, and as a condition precedent thereto, the Engineer shall deliver to the Owner all required certifications, record drawings, as-builts, close-out documents or any other conditions stated or implied in the Agreement.

Payments upon (1) the termination of the Agreement, (2) final payments upon the completion of services prior to the determination of the final Cost of the Work, and (3) partial payments shall be computed from the agreed budget or the agreed estimate of the Cost of the Work whichever is the lesser.

If the Owner abandons, delays, or postpones the project, the Engineer shall deliver to the Owner copies of all documents either completed or in progress so that a determination of the status of the Service(s) involved may be determined to be used on a percentage of completion basis for payments to the Engineer.

Other final payments shall be adjusted and computed from the final Cost of the Work as hereinafter defined and/or modified.

Any payments due for services under the provisions of Article VIII of this Agreement will be paid from time to time as the services are performed or the necessary expenses are incurred, and such payments shall be considered separate and distinct from payments made under the provision of Articles VI.

ARTICLE VII

DEFINITION OF THE COST OF THE WORK

For determination of the Engineer's basic fees, the Cost of the Work means the cost to the Owner, but such cost shall not include any Engineer's fees or reimbursements, or the cost of fixtures or equipment except built-in or attached equipment included in plans and specifications at the Owner's request, and shall not include construction costs, expenses or fees covered by Article No. VIII. The Cost of the Work shall not include the cost of movable equipment or furnishings unless requested in writing by the Owner or by amendment to the Agreement.

No deduction shall be made from the fee for engineering services on account of liquidated damages or other sums withheld from payments to contractors.

When labor or material is furnished by the Owner, the Cost of the Work shall be computed upon such actual cost in determining the agreed estimate of the Cost of Work.

ARTICLE VIII

CONTINUING ENGINEERING

During the term of this Agreement, the Engineer shall perform upon request of the Owner, other engineering consultation services as specified in writing by the Owner.

These continuing engineering services shall include, but are not limited to, handling day to day problems / tasks on the electric system, including telephone calls and visits as requested.

Payments for the above services will be made monthly based on the attached Schedule "A", as periodically amended.

ARTICLE IX

TERM

The Agreement shall become effective as of the date hereof and shall remain in effect thereafter for a period of three (3) years, unless terminated as herein provided, however, that this Agreement may be terminated at any time and for any reason during the term hereof by either party giving ninety (90) days' notice in writing to the other of its intention to terminate. A work order is effective as of the date signed by the parties and shall remain in effect thereafter until completed and may be terminated at any time and for any reason during the term of the work order by either party giving ninety (90) days' notice in writing to the other of its intention to terminate. Upon termination of the Agreement or a work order(s), the Owner shall pay the Engineer for such services as may have been performed by the Engineer prior to such termination, provided that such services by the Engineer have been performed in accordance with the provisions and requirements of this Agreement. Engineer shall not be entitled to, and does hereby waive, any anticipatory profit, overhead or fees in the event of such termination.

ARTICLE X

QUALIFIED PERSONNEL

The obligations and duties to be performed by the Engineer under this Agreement shall be performed by persons qualified to perform such duties efficiently. The Engineer, if the Owner shall so direct, shall replace any engineer or other person employed by the Engineer in connection with the work.

ARTICLE XI

DEFAULT

Engineer's employment under this Agreement may be cancelled or terminated by the Owner in whole or in part by written notice of default to the Engineer upon non-performance, violation of contract terms, delivery failure, bankruptcy or insolvency, or the making of an assignment for the benefit of creditors. The Owner reserves the right to grant Engineer a specified cure period during which to cure or remedy the default, which cure period shall be included in the written notice of default. If default is not cured within the specified time, Owner reserves the right, but is not obligated to, extend the cure period or Owner may deem Engineer's employment under the Agreement terminated without further notice. In any event, the defaulting Engineer (and its surety, if any) shall be liable to the Owner for any and all costs, damages and fees (including attorney's fees) incurred by the Owner as a result of the default. Lack of knowledge by the Engineer will in no way be a cause for relief from responsibility.

ARTICLE XII

INDEMNIFICATION

The Engineer shall indemnify, defend, and hold harmless the City, its officers, employees, and council members from and against all claims, actions, suits, damage judgments, liabilities, liens, causes of action, assessments, fines, loss, injuries (including death), property damage, costs and/or expenses (including attorney's fees and all other litigation costs and expenses), amounts paid in settlement or otherwise suffered or incurred by the City, its officers, employees, and council members, to the extent caused by any negligent act or omission or willful misconduct by the Engineer or its officers, employees, agents, servants, consultants, subconsultants, contractors, subcontractors, or representatives in the Engineer's performance of this Agreement. It is understood and agreed that the aforesaid negligent act or omission or willful misconduct shall include, but shall not be limited to, any intentional wrongful act, any intentional misconduct, any wanton misconduct, and/or any negligent or wanton act or omission. It is further understood and agreed that, in accordance with Act Number 2021-318, Acts of Alabama, enacted by the Legislature of the State of Alabama, this Indemnification and Hold Harmless Agreement shall include an act of negligence, recklessness, intentional tort, intellectual property infringement, or failure to pay a subconsultant or supplier (subject to the limitations outlined herein) that is committed by the Engineer or the Engineer's agent, consultant under contract, or other entity for which the Engineer is legally liable.

ARTICLE XIII

INSURANCE

The Engineer does hereby agree to add the City of Florence, Alabama as "Additional Insured, Primary and Non-Contributory", in its Commercial Auto Liability Insurance and Commercial General Liability Insurance; and to keep in effect at all times during the term of this Agreement the following minimum limits of insurance, and to provide the City of Florence with Certificates of Insurance with a 30 day Notice of Cancellation evidencing such insurance:

Commercial Automobile Liability Insurance including Hired and Non-Owned Auto Liability:
\$1,000,000 Combined Single Limit of Liability;

Commercial General Liability Insurance: \$1,000,000 Combined Single Limit Per Occurrence/\$2,000,000 Aggregate Limit of Liability; \$1,000,000 Personal and Advertising Injury; \$1,000,000 Products and Completed Operations Liability;

Workers Compensation and Employers Liability Insurance: Insurance must meet the insurance requirements as set forth in the current Workers Compensation Act of the State of Alabama. Employers Minimum Liability Limits: \$1,000,000 Each Accident; \$1,000,000 Disease Each Employee; \$1,000,000 Disease policy Limit.

Professional Errors and Omissions Insurance: Professional Errors and Omissions Insurance with Limits of Insurance not less than \$1,000,000. Per Claim/Annual Aggregate, or in an amount quantified in a specific Amendment, whichever is greater.

ARTICLE XIV

INDEPENDENT CONTRACTOR

It is the intention of the parties hereto that this Agreement shall create an independent contractor relationship between them. The Engineer is and shall be solely an independent contractor at all times. The Engineer is not and shall not be an employee, agent, servant, partner, or joint venturer with or of the City, and nothing in this Agreement shall at any time be construed as creating any type of employer-employee, principal-agent, master-servant, partnership or joint venture relationship between the City and the Engineer. The Engineer shall have no right or authority, and cannot and shall not attempt to enter into any contract, commitment or agreement, or make any representation, or incur any debt or liability of any nature in the name of or on behalf of the City without the specific written authorization of the City nor shall the Engineer ever represent that it has any authority to do so. Neither party shall represent to others that the relationship between them is other than as stated above.

ARTICLE XV

TAXES

Engineer will pay all social security and other taxes imposed upon it as an employer in connection with the performance of this Agreement, and will furnish evidence when required by Owner showing that all such required payments have been paid. Engineer shall pay all local, state and federal taxes, as well as any sales tax, connected with the performance of its services under this Agreement.

ARTICLE XVI

RETURN OF DATA

The Engineer shall, immediately upon expiration or termination of its employment under this Agreement, return to the Owner all of the engineering studies, reports, maps and other data furnished to the Engineer by the Owner pursuant to this Agreement.

ARTICLE XVII

BASIC DATA FURNISHED BY OWNER

The Owner shall furnish to the Engineer, and the Engineer shall retain in its office during the term of this Agreement, copies of engineering studies, reports, maps and other pertinent data in respect to the System. The Engineer shall deliver to the Owner a written itemized receipt for such material and shall be responsible for its safe keeping and shall return it to the Owner, upon request, in as good a condition as when received, normal wear and tear excepted.

ARTICLE XVIII

OWNER FURNISHED EMPLOYEES

The Owner shall furnish the services of qualified City employees whenever such services are required to obtain any information or perform any tests that will require working on energized lines, wastewater systems, or other areas as deemed necessary.

ARTICLE XIX

MISCELLANEOUS

Section 1. This Agreement may be simultaneously executed and delivered in two or more counterparts, each of which so executed and delivered shall be deemed to be an original, and all shall constitute but one and the same instrument.

Section 2. This Agreement represents the entire integrated Agreement between the Owner and Engineer and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the Owner and the Engineer.

Section 3. It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

Section 4. It is expressly understood and agreed that the indemnity, certification and insurance obligations of this Agreement shall survive the termination of this Agreement as well as the completion of services under this Agreement.

Section 5. This Agreement has been negotiated, executed and delivered in the State of Alabama, and its validity, construction, interpretation, and enforcement shall be governed by the laws of the State of Alabama. In any action or proceeding relating in any way to this Agreement, the parties hereto consent to the exclusive jurisdiction and venue of the state courts located in Lauderdale County, Alabama and of the federal courts located in the United States District Court for the Middle District of Alabama.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, and the undersigned, by their signatures, certify that they have carefully read this Agreement, understand the terms and conditions contained herein, have proper authority to execute this Agreement, and do so as their own free act:

ATTEST:
BY

CITY OF FLORENCE, AL (Owner)
BY

It's City Clerk

It's Mayor

ATTEST:
BY

(Engineer)
BY

Joni C. Vick

