

**INTRODUCED BY COUNCIL MEMBER DANIELSON AND SECONDED FOR  
ADOPTION BY COUNCIL MEMBER \_\_\_\_\_**

**RESOLUTION NO. 22-47**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANDEVILLE  
AUTHORIZING THE MAYOR OF THE CITY OF MANDEVILLE TO EXECUTE  
A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF  
MANDEVILLE AND KYLE ASSOCIATES, LLC AND PROVIDING FOR OTHER  
MATTERS IN CONNECTION THEREWITH**

**WHEREAS**, the City desires to enter into a professional services agreement with Kyle Associations, LLC for professional engineering services for upgrades the Lift Stations A & 27 project, including but not limited to design, permitting, bidding, construction administration and resident inspection..

**WHEREAS**, the contract is attached and made a part of this Resolution; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Mandeville, hereby authorizes and empowers the Mayor of the City to execute a professional services agreement with Kyle Associates, LLC for professional engineering services on behalf of the City of Mandeville.

With the above resolution having been properly introduced and duly seconded, the vote was as follows:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

and the resolution was declared adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Kristine Scherer  
Clerk of Council

\_\_\_\_\_  
Rick Danielson  
Council Chairman





October 20, 2022

Hon. Clay Madden, Mayor  
City of Mandeville  
3101 East Causeway Approach  
Mandeville, LA 70448  
Email: cmadden@cityofmandeville.com

**Re: Detailed Cost Proposal for Design and Construction Management Services  
Sewer Lift Stations 27 and A Improvements**

Dear Mayor:

In accordance with the request from your office, Kyle Associates, LLC (KA) is pleased to present the following proposal for the design and construction administration services necessary for the improvements to sewer lift stations No. 27 (Mandeville High) and A (Montgomery @ Dupre).

KA understands that this is a lump-sum contract to design improvements to two separate lift stations but the plans and specifications will be combined into one bid package. It is anticipated that the scope will consist of rehabilitating the two lift stations and may consist of, but not be limited to the following at each station:

- Remove and replace the internal components of the wet well and valve pit such as discharge piping, check/gate valves, pumps, rails, supports, vent, etc.
- Provide new emergency pump out (EPO) with a female camlock connector. EPO must be sized as part of the design.
- Upgrade Control Panel to be SCADA compliant.
- Upgrade water service to include backflow preventer, BFP cover, and freeze less hydrant. Water service to be relocated inside the fence.
- Odor control options.
- By-pass pumping of lift station during construction.

The city will authorize KA to begin work on Tasks in writing.

KA shall provide the engineering services for this project in accordance with the tasks outlined below:

**Task 1 – Construction Plan Development:**

Upon receipt of any existing and as-built information the city may have on the existing lift stations, KA will provide engineering services as required to generate preliminary and final construction documents for the rehabilitation of the two sewer lift stations. As required by the City, plan preparation format will include plan/profile sheets, layout drawings, details,

quantities and any other plans necessary to ensure a complete construction package. The project deliverables will be provided in accordance with the requirements of the City. Opinions of probable construction cost will be submitted as part of each submittal broken out by the anticipated phases of the construction work for each station.

Based on information provided to KA by the City and KA's further site reviews of the two lift stations, it is anticipated that the total construction cost for this project will be approximately \$838,800. Utilizing the FP&C State Fee Curve, the fee for this phase of the project shall be in the amount of \$67,148 with the design fee being broken out based on the project deliverables. It is understood that this fee is adjustable depending upon the final construction cost estimate upon completion of the final design submittal for the project.

**Task 2 – Permitting:**

KA will compile the necessary permit drawings along with the applicable permit applications to submit to any and all regulatory agencies required for approval of the proposed lift station improvements. The fee for this task shall be a lump sum not to exceed \$2,500.

**Task 3 – Bidding and Contracting:**

KA shall incorporate any comments from applicable regulatory agencies into the plans and specifications and finalize the construction documents into the necessary bid package(s) that includes the 100% plans and specifications, final opinion of probable construction cost, contractor's license/project classification recommendations and final construction time estimate. KA will also conduct the pre-bid conferences and prepare meeting minutes, issue any necessary addenda to address questions received and assist with the bid openings as requested. KA will also provide assistance in compiling the contract documents for execution by the awarded contractor(s).

It is anticipated that each phase of the bidding task will take approximately 60 calendar days to complete. The fee for this phase of the project shall be a lump sum amount of \$4,477.

**Task 4 - Construction Administration:**

Upon award of the construction contract, KA will provide the necessary construction compliance, administration and acceptance for the project. KA will attend the pre-construction meeting and periodic progress meetings. KA will address questions from the awarded contractor, review shop drawings/submittals and pay applications for the duration of construction to ensure the project is constructed in accordance with the final plans and specifications. Resident inspection is not included as a part of this task but could be added as an additional service. The fee for this phase of the project shall be a lump sum amount of \$17,906. This fee is subject to adjustment depending upon the final decision to construct the proposed improvements in multiple phases.

**Task 5 – Resident Inspection (Optional):**

If requested by the City, KA can provide full-time on-site resident inspection to ensure the selected contractor constructs the project in accordance with the plans and specifications as well as the approved permits.

The fee for this phase of the project would be billed hourly with an estimated amount of **\$45,696**. The estimated fee for this task is based on a rate of \$68/hour for the resident inspection and an estimated construction duration of 4 months (4-months x 21 working days/month x 8 hours/day = 672 man-hours, estimated).

Provided this proposal is acceptable, please proceed with the necessary contract documents for the desired tasks for execution by our office. We appreciate the opportunity to provide this proposal and look forward to working with the City of Mandeville on this important sewer lift station project.

With regards,



Christopher J. Hnatyshyn  
Vice President – Business Development  
Kyle Associates, LLC

Cc: (via e-mail)  
David LeBreton, P.E., POE, PTP, Digital Engineering  
Keith LaGrange, Public Works Director

Enclosures

**Lift Stations 27 & A  
City of Mandeville**

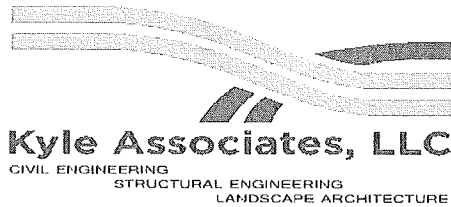
**CONCEPTUAL LEVEL OPINION OF PROBABLE CONSTRUCTION COST  
KYLE ASSOCIATES, LLC**

10/6/2022

Item	Unit	Quantity	Unit Cost	Total
<b>Lift Station #27</b>				
Mobilization	LS	1	\$22,000.00	\$22,000.00
Demolition	LS	1	\$30,000.00	\$30,000.00
New Wet Well Top Slab w/ Hatches	LS	1	\$15,000.00	\$15,000.00
Submersible Pumps	EA	2	\$40,000.00	\$80,000.00
Lift Station Piping - Incl EPO Connection	LS	1	\$40,000.00	\$40,000.00
Control Panel	LS	1	\$90,000.00	\$90,000.00
Electrical Equipment and Labor	LS	1	\$40,000.00	\$40,000.00
Bypass Pumping	LS	1	\$50,000.00	\$50,000.00
Generator	LS	1	\$75,000.00	\$75,000.00
			Subtotal	\$442,000.00
<b>Lift Station A</b>				
Mobilization	LS	1	\$12,000.00	\$12,000.00
Demolition	LS	1	\$5,000.00	\$5,000.00
Submersible Pumps	EA	2	\$25,000.00	\$50,000.00
Valve Box Piping - Incl EPO Connection	LS	1	\$15,000.00	\$15,000.00
Control Panel	LS	1	\$90,000.00	\$90,000.00
Electrical Equipment and Labor	LS	1	\$25,000.00	\$25,000.00
Bypass Pumping	LS	1	\$50,000.00	\$50,000.00
			Subtotal	\$257,000.00

Construction Cost Opinion Sub-Total:	\$699,000.00
Contingency - 20%	\$139,800.00

<b>Total Opinion of Probable Construction Cost:</b>	<b>\$838,800.00</b>
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Fee Calculator based on FPC Formula

Ref: LAC: Title 34, Part III, Chapter I, Section109

Funds Available for Construction	\$838,800
Complexity	Medium
Renovation Factor	1.15
Subject Year	2022
BCI	6912
CPI	271.0
BCI Ratio	0.1889
CPI Ratio	5.04
Base Fee Percentage	8.44%
Base Fee	\$70,775
Complexity Factor	1.10
Fee w/ Modification Factors	<b>\$89,531</b>
Fee as % of AFC	10.67%

FEE BREAKDOWN BY PROJECT PHASE

Preliminary Design:	\$22,383	25%
Final Design:	\$44,765	50%
Advertisement and Bidding:	\$4,477	5%
Construction Administration:	\$17,906	20%
<b>Total Fee:</b>	<b>\$89,531</b>	100%

Most recent year data available

Year	2021
CPI	271.0
BCI	6912





**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**THE CITY OF**

**MANDEVILLE AND**

**KYLE ASSOCIATES, LLC**

**COM PROJ. NO. 212.23.008**

**LIFT STATION A (MONTGOMERY @ DUPRE) AND LIFT STATION 27  
(MANDEVILLE HIGH) UPGRADES PROJECT**

**THIS AGREEMENT** (the “**Agreement**”) is entered into by and between the City of Mandeville represented by Mayor Clay Madden (the “**City**”), and Kyle Associates, LLC, represented by Christopher J. Hnatyshyn, Vice-President, (the “**Consultant**”). The City and the Consultant are sometimes collectively referred to as the “**Parties**.” This Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, the Consultant was qualified to provide engineering services on an as-needed basis pursuant to a Request For Qualifications issued by the City on October 28, 2020 and approved by the City on December 10, 2020, (the “**RFQ**”);

**WHEREAS**, the Consultant submitted a proposed fee schedule and scope of work for the Project dated October 20, 2022 (the “**Consultant’s Proposal**”), and the City accepted the Consultant’s Proposal;

**NOW THEREFORE**, the City and the Consultant, for good and valuable consideration, agree as follows:

**ARTICLE I. OBLIGATIONS OF THE CONSULTANT**

**A. SCOPE OF SERVICES.**

The Consultant shall provide professional services for design, permitting, bidding, construction administration, for Lift Station No. A (LS A) located at Montgomery at Dupre and Lift Station No. 27 (LS No. 27) located on Mandeville High Blvd. The scope of work to be done at the lift stations is as follows:

- Remove and replace the internal components of the wet well and valve pit such as discharge piping, check/gate valves, pumps, rails, supports, vent, etc.
- Provide new emergency pump out (EPO) with a female camlock connector. EPO must be

sized as part of the design.

- Upgrade Control Panel to be SCADA compliant.
- Upgrade water service to include backflow preventer, BFP cover, and freeze less hydrant. Water service to be relocated inside the fence.

Odor control options and by-pass pumping of lift station during construction.

Consultant is to perform each of the services and provide all deliverables as set forth in this Article and elsewhere in this Agreement (collectively, the “**Services**”).

The Consultant shall provide data and computations to support the design. Core boring information shall be incorporated in the design when applicable. Plans must be prepared using AutoCAD compatible with the City. The Consultant shall also submit to the Department of Public Works (the “**Department**”) all designs, computations, original reproducible drawings, typed originals of all specifications and proposal documents as required, and the final drawings on electronic format compatible with the City’s software systems at the discretion of the City. All plans must be signed and stamped by a Louisiana Registered Civil Engineer of the Consultant’s firm, who shall be responsible for the design.

The Consultant shall contact each applicable utility and obtain information regarding the location of their utilities and this information, as provide, shall be shown on the design drawings. The Consultant shall contact other firms designated by the City doing related work and shall coordinate, schedule, and report the efforts of the Firms to the City’s authorized representative. This information shall be shown on the design drawings. The Consultant shall obtain verification from the utilities of all locations named above.

The Consultant shall report all verified conflicts to the Department for coordination.

The Consultant shall, in a timely manner, contact the Department, and Planning Department as necessary, relative to horticultural requirements, such as a tree trimming, root pruning, hand work for curbing and walks near trees, etc., as required for construction, and resolve any conflicts prior to completion of final plans.

The Consultant shall provide the Department with all services required for preparation of preliminary design plans, final plans, specifications, and bid documents. These services include, but are not limited to, topographic and right-of-way surveys, preliminary plans, computations used to develop design, participation in the plan-in-hand conference, a preliminary estimate of a construction contract cost based on estimated quantities developed from the preliminary plans, and a final estimate of construction contract cost based on estimated quantities developed from the final plans.

Meetings with the City shall be scheduled as required to solicit input on project progress and upcoming issues or concerns. Consultant shall prepare and deliver a record of decisions and action items to the City for each meeting.

The Consultant shall prepare and submit complete detailed construction contract specifications and bid documents along with a revised construction cost estimate of the project to the Department.

Except for data to be furnished by the City as specifically provided by this Agreement, the Consultant shall obtain all data and furnish all services and materials required to fully develop and complete the plans, specifications, and bid proposals through the contract plan stages, including any and all work beyond the limits of the project that may be necessary to make proper connections at the beginning and end of the project limits of construction.

In addition, the Consultant shall obtain all data and furnish all services required during the construction stage, maintain all records necessary during the construction stage, ensure compliance with plans and specifications, and prepare partial and final payment to the Construction Contractor for the Department's approval. Attendance by the Consultant or its representatives at legal hearings and appearances in court are to be furnished by the Consultant at established rates to the extent of the funds available.

The Consultant shall attend up to 3 public meetings, as required. The Consultant shall provide displays appropriate for public meetings and shall provide a meeting summary following each meeting. The Consultant shall attend coordination meetings with the Department and other stakeholders. The Consultant shall provide all relevant project information to support conduct of these coordination meetings and provide a meeting summary following each meeting, as directed. The costs of which are included in the lump sum fee specified hereunder.

The Consultant is responsible for the relevance and accuracy of items and details included in the plans, specifications, or other contractual documents prepared by the Consultant. The Department will review and approve such documents only for general conformance to the Scope of Project. It is understood that the preparation of preliminary and final plans, specifications, bid documents, and estimates required of the Consultant under this Agreement will meet the standard requirements of the City as to general format and content and shall be performed to the satisfaction of the City. The Consultant shall correct all errors and omissions in the plans and specifications, including those discovered subsequent to the acceptance by the Department, without additional compensation.

The basic services to be performed by the Consultant are divided into six (6) phases of work identified in general as follows and more fully described below:

- |              |   |
|--------------|---|
| Phase I.     | Survey                                  |
| Phase II.    | Preliminary Design                      |
| Phase III.   | Environmental Study ( <i>Not Used</i> ) |
| Phase IV(a). | Final Design                            |
| Phase IV(b). | Bid & Award                             |

Phase V(a).	Construction Administration
Phase V(b).	Construction Closeout
Phase V(c)	Inspection, Reporting, and Verification
Phase VI(a)	Permitting

**PHASE I. SURVEY (Not Used)**

**PHASE II. PRELIMINARY DESIGN (DESIGN DEVELOPMENT)**

Prior to the start of this phase, a pre-design meeting will be held. During the performance of this phase, a monthly design meeting may be held among the Engineer, the Department, and relevant City authorities in order to clarify any aspect of the proposed work. Phase II Design services shall be divided into 2 milestones: 60% Design Plans and 90% Design Plans.

*60% Design Submittal*

Prepare a Preliminary Design Report. The report shall document the proposed design per City standards and guidance, computations and modeling outcomes used in developing the design, agreed program (including operations and maintenance, as relevant), updated opinion of probable cost and updated schedule for design and construction.

Two (2) sets, full size 22-inches by 34-inches hard copies and electronic files of 60% design plans, together with an electronic copy of the Preliminary Design Report, shall be furnished to the City.

Upon receipt of comments, if any, the Engineer shall revise the plans accordingly until the preliminary plans are acceptable to the Department. The Engineer shall then submit to the City one (1) full size 22-inches by 34-inches set of reproducible plans, stamped and dated "60% Design" for making a complete plan-in-hand review with the Department's representatives, utility companies, and others, at a time and date mutually agreed to in advance. Following receipt of this submittal, a plan-in-hand meeting will be held.

The Engineer's 60% Design Submittal shall include:

- Design Report
- Incorporate and address all entities previous comments into current design

- Set of Project specifications
- Latest Construction Cost estimate
- Submit two (2) full size sets (22x34) with all electronic files (CAD & PDF)

Engineer shall submit 60% Design submittal with an updated construction cost estimate within 60 calendar days after submittal of Phase I Survey.

### 90% Design Submittal

Phase II shall be considered complete after the plan-in-hand comments have been received and incorporated by the Engineer. A listing of plan-in-hand comments, additions, and deletions shall be compiled by the Engineer for inclusion in the Phase II deliverables. A preliminary construction cost estimate, based on estimated quantities developed from the preliminary plans, shall be submitted with the preliminary plans.

The Engineer's 90% Design Submittal shall include:

- Incorporate and address all entities previous comments into design
- Complete Topo Survey information is to be shown on Plan/Profile drawings,
- Proposed profile should match the elevation on cross sections
- Complete and final set of specifications
- An updated Cost estimate
- Submit two (2) full size sets (22x34) hard copies with all electronic files (CAD & PDF)
- Apply for and acquire any permits on the City's behalf

Engineer shall submit 90% Design submittal with an updated construction cost estimate within 60 calendar days after submittal of 60 % Design submittal.

All changes to the plans, specifications, and construction cost estimate shall be logged. Drawings should be considered 90% design stage by the culmination of this Phase.

### Phase II Deliverables:

1. Provide Meeting Minutes within five (5) working days of each Meeting
2. 60% Design Submittal with accepted updated construction cost estimate
3. 90% Design Submittal with accepted updated construction cost estimate

### **PHASE III. ENVIRONMENTAL STUDY (*NOT USED*)**

## **PHASE IV(a). FINAL DESIGN**

This phase shall consist of Engineering Services required for the preparation of complete final construction plans, specification, bid documents, and construction cost estimate. These shall meet the standard requirements of the Department's general format and content. Specifically, the work under this phase consists of the following:

1. After the plan-in-hand inspection, the Consultant shall make such changes as necessary to reflect agreements reached at this stage and when authorized in writing by the Department, prepare final plans. The Consultant shall then submit three (3) set of revised full size 22-inches by 34-inches hard copies and electronic files to the Department. These shall be stamped "Advance Check."
2. A listing of plan-in hand comments, additions, and deletions compiled by the Consultant shall be incorporated into the Finalized Design Report, along with design decisions, final computations, updated construction cost estimate, based on finalized quantities developed from the "Advance Check" plans, and updated schedule.
3. The Consultant shall prepare detailed construction contract specifications and bid documents for the project and submit three (3) sets, along with the "Advance Check" prints, to the Department for review. A revised construction cost estimate, a detailed traffic control plan, and a permanent pavement marking and signing plan shall be submitted at this time (if applicable). Specifications, contract documents, and the construction cost estimate shall be submitted in both hard copy and electronic format using computer software compatible with that used by the City for specifications, contract documents, and cost estimates.
4. Upon receipt of the Department's comments pertaining to plans and specification, the Consultant shall revise and complete the final contract plans and specifications.

The bid proposal form shall include a summary of all documents required to be submitted with the bid or at some specified time after receipt of bids.

Upon completion and acceptance of final plans and specifications, the Consultant shall submit the original reproducible and typed originals of all specifications and proposal documents to be reproduced by the Department for bids. Final plans and bid documents shall be in electronic format compatible with the Department's CAD and software systems.

The plans and proposals shall be accompanied by a construction cost estimate based on the final contract plans.

All plans shall be signed and stamped by a Louisiana-registered Civil Engineer, Architect, and/or Landscape Architect and member of the Consultant's firm, who shall be responsible for the design.

Phase IV(a) Deliverables:

1. "Advance Check" plans and Specifications
2. Finalized Design Report with design decisions, final computations, updated construction cost estimate, based on finalized quantities developed from the "Advance Check" plans, and updated schedule.
3. Final Plans, Specifications, Computations, and Construction Contract Cost Estimate
4. Bid Proposal Package

**PHASE IV(b). BID & AWARD**

If the Department proceeds with bidding the Project, the Consultant shall attend the pre-bid and preconstruction conferences and be prepared to address any questions regarding the engineering work. The Consultant shall assist the City with preparing addenda and responses to bidder's questions. The Consultant shall attend bid openings, prepare bid tabulation sheets and check documentation submitted with bids for completeness. The Consultant shall submit the bid tabulation and award recommendation letter to the City within two (2) working days of the bid opening. The award recommendation letter shall report on completeness and technical correctness of the bids received.

Phase IV(b) Deliverables:

1. Bid Opening Meeting Minutes
2. Addenda, Questions and Answer Responses
3. Award Letter Recommendation Letter

**PHASE V(a). CONSTRUCTION ADMINISTRATION**

The services to be performed during construction shall consist of, but may not be limited to, the following:

- Attend pre-construction meeting and prepare meeting agenda and minutes
- Review and track material submittals, approve, or take other appropriate action, for shopdrawings and samples which the contractor is required to submit (as warranted)
- Obtain and document pre-construction video (if required)
- Review and track contractor Requests for Information (RFIs), and respond as necessary
- Assist with technical issues arising during construction
- Attend progress meetings

- Perform occasional site visits at intervals appropriate to various stages of construction
- Recommend work be rejected while in progress if not in accordance with contract documents and threatens integrity of the design concept
- Issue necessary interpretations and clarifications of the contract documents and specifications as appropriate (field orders)
- Evaluate and coordinate with City regarding acceptability of substitute or “or-equal” materials and equipment proposed by the contractor
- Review quantities and pay applications for contractor invoicing and recommend payment
- Review final pay applications for Construction Contractor invoicing and recommend payment
- Prepare the Independent Cost Estimate ("ICE") and Cost Analysis ("CA") for all field changes and plan changes for approval by the City
- Review and approve Project schedule
- Assist the Department in Project close out activities.

A Louisiana-registered Civil Engineer, Architect, and/or Landscape Architect shall be in charge of the Services. Such personnel shall be qualified for their assignments and shall be approved by the City.

All documents submitted to the City must be signed by the Consultant's Louisiana-registered Civil Engineer, Architect, and/or Landscape Architect assigned to be in charge of the Services.

All reports shall be submitted within the time period specified by the City.

In a timely manner, the Consultant shall advise the City of any drainage, sewer, and water damages so that such facilities may be properly inspected.

The Consultant shall observe the progress of the project as required, with particular emphasis on the requirements of the General and Special Specifications relative to the timely review of submittals, shop drawings and samples, value engineering proposals, and evaluation of



substitute materials.

The Consultant shall, in a timely manner, notify the City, through the Director of the Department of Public Works or the Director's Authorized Representative of all problems that may impact the Project's cost or construction time.

The Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work. These duties and responsibilities are exclusively the Construction Contractor's obligation. The Consultant will not be responsible or have control or charge over the acts or omissions of the Construction Contractor, Subcontractors, or any agents, employees, or any other persons performing any of the work.

The Department will have the authority to reject work based on the Consultant's recommendations that does not conform to the Construction Documents. The Department and the Consultant may require special inspections for testing of the work at any stage of preparation or completion.

The Consultant will not authorize or direct the Construction Contractor to deviate from the plans and specifications without written authorization from the City, through its Director of the Department of Public Works or the Director's Authorized Representative. The Consultant is not responsible for any costs incurred as a result of delays incurred in obtaining written authorization by the Department for necessary or desired changes in the plans and/or specifications.

The Consultant shall submit all required documentation and process plan changes in a timely manner.

The Consultant shall submit to the Director or the Director's Authorized Representative for written approval within two (2) working days after signature by the Construction Contractor, any plan change that increases the Project's cost or time required prior to the work being authorized. Should the Consultant approve a plan change, which increases the Project's cost or time required without prior written approval by the Director or the Director's Authorized Representative, the Consultant shall be liable for the increased cost. The Department personnel (designee) authorized to approve such plan changes shall include the Director or the Director's Authorized Representative assigned to the Project.

The Consultant shall be responsible for complying with the recordation requirements set forth in La. R.S. 38:2222, including without limitation the payment of any costs associated with the recordation of this Agreement and as well as for the recordation of any plan change or amendment, when recordation of such is required.

The Consultant shall verify all pay items of work; quantities completed, and prepare partial and final requests for payment on City's forms for work satisfactorily completed by the Construction Contractor. Quantities shall be derived from the plans unless otherwise directed.

The Consultant shall coordinate with the Construction Contractor on monthly pay request within after the end of the reporting period. The preparation of the Construction Contractor's monthly pay request consists of coordinating with the Construction Contractor on quantities in place and submitting to the Department completed pay request form (signed by the Construction Contractor and the Consultant) and form Weather and Working Day Report (signed by the Construction Contractor and the Consultant).

The Construction Contractor's invoice is to be submitted directly to the Consultant. The Construction Contractor's monthly pay request form and Weather and Working Day Report shall be submitted for payment within five (5) working days after the Construction Contractor has submitted the signed the invoice. Project diary and weekly progress reports shall be submitted within five (5) working days after the end of the reporting period.

In addition to the above services, the Consultant shall coordinate the activities of the testing laboratory designated by the Department to ensure that all materials entering the project, and the performance of the constructed features, are in accordance with the Project Construction Documents (plans and specifications) and/or the State's requirements.

The Consultant shall review all testing reports as submitted by the testing laboratory and shall report to the Department if any of the work or material is not in conformance with the project's Construction Documents based upon test results. The Consultant shall review reports prepared by the testing laboratory for accuracy. The Consultant shall review and make recommendation for approval of pay requests for the testing laboratory for consistency with the testing performed.

When notified by the Construction Contractor that, in its opinion, all items of work required by the Agreement has been completed, the Consultant shall make a final inspection of the Work, including any tests of operation. If the Consultant finds all things are satisfactory after completion of this inspection, the Consultant shall recommend acceptance of the Project to the Director, shall prepare an overrun/underrun statement, and establish the need, if necessary, to impose liquidated damages on the Construction Contractor. The Consultant shall conduct the one (1) year warranty inspection and provide the Department with a detailed report with photographs depicting all deficiencies and listing corrective actions for which the Construction Contractor is responsible.

The Consultant shall participate in the final inspection of the Work.

Upon completion of this Phase, the Consultant shall submit "As Built" drawings of the Project in hard copy and in an electronic format compatible with the Department's CAD and software systems.

Phase V(a) Deliverables:

- Project Schedule
- Submit Monthly Pay Requests, Schedule Updates, and Weather Reports

- ICE Documentation
- CA Documentation
- Construction Field Records
- Monthly Pay Requests, Schedule Updates and Weather Reports
- Plan Change Requests
- Non-Conforming Materials Notifications
- Recommendation for Approval of Testing Laboratory Pay Request
- As-Built Drawings
- Submit daily Final Inspection Report
- Overrun/Underrun Statement
- Warranty Inspection Report
- Man Hours Breakdown Report
- Prepare and Maintain Weekly Construction Field Observation Reports and Records and submit monthly to the Department and to the Construction Contractor
- Assist the City in maintaining the Testing Budget by determining when such testing will be required in accordance with the General and Special Specifications

#### **PHASE V(b). CONSTRUCTION CLOSE OUT**

When notified by the Construction Contractor that, in its opinion, the Project is substantially complete, the Engineer shall verify the Construction Contractor's claim and, if the Engineer concurs, schedule a final walk-through. The Engineer shall conduct and invite all stakeholders to this walk-through. Immediately following the walk-through, the Engineer shall develop a substantial completion punch-list of remaining items with associated costs.

The Engineer shall schedule a final inspection, including any tests of operation. If the

Engineer finds all things are satisfactory after completion of this inspection, the Engineer shall recommend acceptance of the Project to the Director, shall prepare an overrun/underrun statement, and establish the need, if necessary, to impose liquidated damages on the Construction Contractor. The Engineer shall conduct and invite all stakeholders to the final inspection.

Upon completion of this Phase, the Engineer shall submit "As Built " drawings of the Project in hard copy and in an electronic format compatible with the Department's CAD and software systems.

The Engineer shall conduct the one (1) year warranty inspection and provide the Department with a detailed report with photographs depicting all deficiencies and listing corrective actions for which the Construction Contractor is responsible. This inspection shall occur eleven (11) months from the date of substantial completion.

**Phase V(b) Deliverables:**

1. Develop a Substantial Completion Punch-list with Associated Costs
2. As-Built Drawings
3. Final Inspection Report with Project Acceptance Recommendation
4. Overrun/Under run Statement
5. One (1) Year Warranty Inspection Report submitted to the Department eleven (11) months from the date of substantial completion

**PHASE V(c) . INSPECTION, REPORTING, AND VERIFICATION *(if requested)***

The Department may also choose to require the Consultant to provide Resident Inspection services, which shall consist of, but may not be limited to, the following:

- Observe construction at all times while the Construction Contractor is working on critical work items
- Inspect, measure, and appropriately track (eligible) work completed for pay requests and provide this information to the City.
- Ensure work does not adversely affect utilities, adjacent areas and/or property, etc.
- Prepare daily field reports, and/or field books
- Photograph and/or document work progress
- Document and coordinate with the City for unforeseen items encountered during

construction

- Coordinate with and monitor work performed by material testing agency, utilities, and other on-site visitors as required
- Prepare memorandums or documentation required for field changes
- Verify that Construction Contractor providing adequate traffic control and site safety procedures.
- Prepare incident reports
- Notify the City and Construction Contractor of any safety concerns and potential impacts to the public.

Field construction inspector(s) shall be provided and be on the Project site at all times (or at the discretion of the Department) when construction work is being performed. Such personnel shall be qualified for their assignments and shall be approved by the Department.

During construction, the Consultant shall maintain all construction field records normally maintained by the Department. Entries shall be made daily in the project diary to indicate the Consultant's personnel on the Project, as well as, the forces of the Construction Contractor, the Construction Contractor's equipment, and the work performed.

The Consultant shall continually observe the progress of the Project, with particular emphasis on project site safety and the requirements of the General and Special Specifications relative to the timely rejection of all nonconforming work and materials, the applications of the work forces to particular portions of the work, the conformance of the work to the Construction Contractor's schedule, the timely prosecution of the work and perform any required interviews of the Construction Contractor.

The Consultant shall document all pay items of work and quantities completed. Quantities shall be derived from the plans unless otherwise directed.

The Consultant shall forward the Construction Contractor's monthly updated schedule of work with the partial payment requests and weather reports. All documents submitted to the Department must be signed by the Consultant's Louisiana-registered Civil Engineer, Architect, and/or Landscape Architect assigned to be in charge of the Services.

All reports shall be submitted within the time period specified by the Department.

In a timely manner, the Consultant shall notify the Department of all problems that may impact the Project's cost or construction time.

The Consultant shall review all testing reports as submitted by the testing laboratory and

shall report to the Department if any of the work or material is not in conformance with the Project's Construction Documents based upon test results.

The Consultant shall cooperate with the City and any other contractors providing services to the City as needed.

#### **PHASE VI(a) . PERMITTING**

Work under this task consists of assisting City with coordinating and providing data and documentation necessary to obtain a permit for construction. Consultant will prepare necessary documentation including design drawings and other information necessary for completing the required permit applications. The below permits are anticipated for the project.

- a. Louisiana Department of Health and Hospitals

#### **B. CONSULTANT'S STANDARD OF CARE.**

The Consultant represents and warrants that it has the requisite skills and expertise necessary to perform the Services. Accordingly, the Consultant is expected to perform all services with the same degree of care, skill and diligence as would be ordinarily exercised by a competent practitioner of the same profession in providing similar services under the same or similar circumstances. The Consultant acknowledges and agrees that, at the City's option, the Consultant shall be obligated to re-perform, at no additional cost to the City, any or all of the Services that fail to satisfy the foregoing standard of care.

### **ARTICLE II. THE CITY'S OBLIGATIONS.**

The City will:

- A. Provide administration of this Agreement through the Department of Public Works;
- B. Provide the Consultant records deemed necessary for the performance of the Services by the Consultant, including:
  1. GIS/CAD files of:
    - a. Street Assets for reference;
    - b. Utility and unit sheets (if available)
    - c. As-built drawings (if available)
    - d. Provide access to personnel to discuss the scope of services during normal working hours, as requested by the Consultant;
    - e. Provide any other standard plans and details that may be relevant for use on the Project; and

- f. Make payments to the Consultant monthly based upon the Consultant's certified invoices, except as otherwise authorized by this Agreement or by law. The City's payment obligation is subject to the Consultant's satisfactory performance of the services and conditions required by this Agreement, including, without limitation, the submission of satisfactory deliverables, progress schedules, invoices, and evidence of necessary insurance.

### **ARTICLE III. CONTRACT TIME AND SCHEDULE**

A. **DURATION**: This Agreement shall commence on the Effective Date and shall continue until and through a period of two (2) years.

B. **EXTENSION**: This Agreement may be extended at the option of the City, provided that funds are allocated by the Council of the City and the extension of the Agreement facilitates continuity of services provided herein. This Agreement may be extended by the City on an annual basis for no longer than three (3) one-year periods.

C. **PROJECT SCHEDULE**: Time is of the essence in completing each phase of work required by this Agreement. The Consultant agrees to initiate the 90% design phase immediately upon submittal of the 60% design phase. A revised schedule may be required, including without limitation after each phase of work is completed or with any approved plan change. For any slippage from the approved schedule, the Consultant shall submit a descriptive narrative to the Department for consideration and approval of any modification to the schedule. By a written request to the Director, the Consultant may seek an extension of time and credit caused by delays beyond its control or for those delays caused by tardy approvals of work in progress by various official agencies. The Director shall have the discretion to grant any requested extension. No additional compensation shall be allowed for such delays. The City shall have the right to approve or require changes to any part or all of the proposed schedule. The Consultant shall update this schedule monthly with progress details for each item of work and shall submit the updated schedule with any invoice. Any modifications to the schedule must be approved by the City in writing.

D. **PHASE I SURVEY**: Not Used

E. **PHASE II PRELIMINARY DESIGN**: The services to be performed during the Preliminary Design Phase shall be completed within **ONE-HUNDRED AND THIRTY-FIVE (135)** calendar days from the date of issuance of the Notice to Proceed for this phase.

F. **PHASE IV(a) FINAL DESIGN**: The services to be performed during the Final Design Phase shall be completed within **THIRTY (30)** calendar days from the date of issuance of the Notice to Proceed for this phase.

**G. PHASE IV(b) BID AND AWARD:** The services to be performed during the Bid and Award Phase shall be completed within **FORTY-FIVE (45)** calendar days from the date of issuance of the Notice to Proceed for this phase.

**H. DELAYS:** The City may assess the Consultant \$1,500.00 per calendar day for each phase that is not completed by the deadline in the approved schedule, without further notice to the Consultant, to the extent the delay is caused solely by the Consultant. The City may deduct this penalty from payments due to the Consultant for services rendered under this Agreement up to a maximum amount for each phase equivalent to 25% of the total fee for that phase of work.

#### **ARTICLE IV. COMPENSATION**

**A. FEES UNDER THIS AGREEMENT:** The Consultant's compensation for the services performed under this Agreement shall be in accordance with the follow fees:

PHASE I.	Survey		<b>Not Used</b>	
PHASE II.	Preliminary Design		<b>\$22,383.00</b>	(Lump Sum)
PHASE III.	Environmental Study ( <i>if requested</i> )		<b>NOT USED</b>	(Lump Sum)
PHASE IV(a)	Final Design		<b>\$44,765.00</b>	(Lump Sum)
PHASE IV(b)	Bid & Award		<b>\$4,477.00</b>	(Lump Sum)
PHASE V(a)&V(b)	Construction Administration & Closeout		<b>\$17,906.00</b>	(Lump Sum)
PHASE V(c)	Inspection, Reporting, & Verification		<b>\$45,696.00</b>	(Hourly, NTE) (If requested by the City)
PHASE VI(a)	Permitting		<b>\$2,500.00</b>	(Not To Exceed)

**B. MAXIMUM AMOUNT:** The maximum aggregate amount payable by the City for all services performed under this Agreement is **\$137,727.00**. The City has the right to increase or decrease the compensation based on the cost of actual bids being received. The adjustment will be based on the Facility Planning & Control (FP&C) Curve with a multiplier 1.0 and will apply to Phases 1 through V in this Agreement. No adjustment if the contract award meets or exceeds 90% of the Estimated Construction Cost but does not exceed by 10% the Estimated Construction Cost. This amount is inclusive of all services and cannot be increased except by a validly executed amendment and the City's Department of Finance has certified the availability of the additional funding. The City's obligation to compensate the Consultant under this Agreement will not exceed the maximum aggregate amount payable at any time.



C. **ACKNOWLEDGEMENTS:** The Consultant acknowledges and agrees that, unless otherwise provided by a validly executed amendment:

1. The City's officers and employees are not authorized to request or instruct the Consultant to perform any work beyond the scope or duration of this Agreement, except as may be provided by laws governing emergency procedures;
2. Officers and employees of the City are not authorized to offer or promise the Consultant additional funding in excess of the maximum amount payable established in this Agreement; and
3. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

#### **ARTICLE V. INVOICES**

The Consultant shall submit monthly invoices showing the percentage and dollar amount of the Services provided to date for such submission and show a deduction of five percent (5%) of the amount earned to date as an amount to be retained by the Department until satisfactory completion of the required work. When each phase of work is satisfactorily completed, the retainage for that phase will be released.

The Consultant shall submit three (3) invoices in a format approved by the Department shall be submitted to the Department along with three (3) sets of back-up or verification documentation. Electronic files of the invoices and back-up documentation may be placed on a USB thumb drive or downloadable shared link for submittal.

#### **ARTICLE VI. INDEMNITY.**

A. **INDEMNITY:** To the fullest extent permitted by law, the Consultant will indemnify, defend, and hold the City, its officials, employees, and agents (the "**Indemnified Parties**") harmless from and against: (1) any and all claims, demands, suits, judgments of sums of money to any party accruing against the City for loss of life or injury or damage to persons or property growing out of, resulting from, or by reason of any act or omission or the operation of the Consultant or any of its subcontractors, or any of its or their agents, servants, employees, while engaged in or about or in connection with the discharge or performance of the services to be done or performed by the Consultant under this Agreement; and (2) any and all claims and/or liens for labor, services, or materials furnished to the Consultant in connection with the performance of its obligation under this Agreement.

B. **LIMITATION:** The Consultant's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that

neither the Consultant nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

C. **INDEPENDENT DUTY**: The Consultant has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Consultant is ultimately absolved from liability.

D. **EXPENSES**: The Consultant will bear all expenses, including without limitation the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

## **ARTICLE VII. INSURANCE**

A. **MINIMUM SCOPE OF INSURANCE**: At all times during the term of this Agreement, the Consultant, at its own expense, will maintain policies of insurance sufficient to provide the following minimum scope of insurance coverage:

1. ***Commercial General Liability ("CGL")***: Insurance Services Office ("ISO") Form CG 00 01 or similar acceptable to the City, covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.
2. ***Automobile Liability***: ISO Form Number CA 00 01 or similar acceptable to the City covering any auto (Symbol 1 or Symbols 7, 8, 9), or if the Consultant has no owned autos, hired (Code 8), and non-owned autos (Code 9), with limits no less than \$1,000,000.00 Combined Single Limit per accident for bodily injury and property damage.
3. ***Workers' Compensation***: as required by the State of Louisiana, with Statutory Limits, and Employer's Liability Insurance with limits no less than \$1,000,000.00 per accident for bodily injury or disease.
4. ***Professional Liability (Errors and Omissions)***: with limits no less than \$1,000,000.00 per claim.

B. **OTHER INSURANCE PROVISIONS**: The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. ***Additional Insured Status:*** The Consultant will provide and maintain a Certificate of Insurance naming The City of Mandeville its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as “Additional Insureds” on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Consultant’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence of all required coverage, should name the City of Mandeville as Certificate holder and be delivered via U.S. Mail to Mandeville City Hall, 3101 East Causeway Approach, Mandeville, LA 70448.
2. ***Primary Coverage:*** For any claims related to this Agreement, the Consultant’s insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Consultant’s coverage.
3. ***Claims Made Policies:*** If applicable, the retroactive date must be shown and must be before the Effective Date of this Agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, the Consultant must purchase “extended reporting” coverage for minimum of 5 years after the termination of this Agreement.
4. ***Waiver of Subrogation:*** The Consultant and its insurers agree to waive any right of subrogation that any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this Agreement.
5. ***Notice of Cancellation:*** Each insurance policy required above shall provide that coverage shall not be canceled, except with prior notice to the City of no less than 60 days.
6. ***Acceptability of Insurers:*** Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

#### **ARTICLE VIII. NON – DISCRIMINATION.**

A. **NON – DISCRIMINATION:** In the performance of this Agreement, the Consultant will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Consultant in any of Consultant’s operations within the City of Mandeville or (2) any person seeking accommodations, advantages, facilities, privileges,

services, or membership in all business, social, or other establishments or organizations operated by the Consultant. The Consultant agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

**B. NON – DISCRIMINATION IN EMPLOYMENT:** In all hiring or employment made possible by, or resulting from this Agreement, there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, affirmative action will be taken to ensure that the Consultant’s employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. The Consultant will require all subcontractors to comply with the requirements of this article.

#### **ARTICLE IX. INDEPENDENT CONTRACTOR STATUS**

**A. INDEPENDENT CONTRACTOR STATUS:** The Consultant is an independent contractor and will not be deemed an employee, servant, agent, partner, or joint venturer of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

**B. EXCLUSION OF WORKERS’ COMPENSATION COVERAGE:** The City will not be liable to the Consultant, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen’s Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Consultant will not be considered an employee of the City for any reason, including for the purpose of Worker’s Compensation coverage.

**C. EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE:** The Consultant, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Consultant nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Consultant has been and will be free from any control or direction by the City over the performance of the services covered by this Agreement; (b) the services to be performed by the Consultant are outside the normal course and scope of the City’s usual business; and (c)

the Consultant has been independently engaged in performing the services required under this Agreement prior to the effective date of this Agreement.

**D. WAIVER OF BENEFITS:** The Consultant, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

#### **ARTICLE X. NOTICES**

Except for any routine communication, any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or by certified mail, return receipt requested as follows:

If to the City:                    Director, Department of Public Works  
    City of Mandeville  
    1100 Mandeville High Blvd  
    Mandeville, La 70471

&

    City Attorney  
    City of Mandeville  
    3101 East Causeway Approach  
    Mandeville, LA 70448

Notices shall be effective when received, except any notice that is not received due to the intended recipient's unjustified refusal or avoidance of delivery shall be deemed received as of the date of the first attempted delivery. Each party shall be responsible for notifying the other in writing that references this Agreement of any changes in the respective addresses set forth above.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and the Consultant.

#### **ARTICLE XI. ADDITIONAL TERMS AND CONDITIONS**

**A. OWNERSHIP OF DOCUMENTS:** All data collected by the Consultant and all documents, notes, drawings, tracings, and files collected or prepared for the Project, except the Consultant's personnel and administrative files, shall upon payment therefore become and be the property of the City and the City shall not be restricted in any way whatsoever in the use of such material for the specific purpose intended; provided, however, that any use except for the specific purpose intended will be without liability or legal exposure to the Consultant.

Notwithstanding anything to the contrary contained herein, any tools, systems or information used by the Consultant to provide the Services hereunder, including computer software (object code and source code), know-how, methodologies, equipment or processes and

the intellectual property inherent therein and appurtenant thereto, shall remain the sole and exclusive property of the Consultant or its suppliers.

The Consultant makes no representations as to the compatibility of files and deliverables with the City's hardware and/or software configurations unless specifically set forth in this Agreement. Because data stored on electronic media can deteriorate undetected or be modified, the Consultant shall not be held liable for the completeness or accuracy of the electronic data after the acceptance by the City. Only the submitted hard copy documents with the Consultant's seal on them will be considered instruments of service hereunder. If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

**B. CITY'S RIGHT TO APPROVE PERSONNEL:** The City reserves the right to approve or reasonably disapprove all engineers, workers, and other field personnel assigned to the Project.

**C. REMEDIES CUMULATIVE:** No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate, and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

**D. SURVIVAL OF PROVISIONS:** All representations and warranties and all responsibilities regarding record retention, access, and ownership, cooperation with Office of Inspector General investigations, and indemnification shall survive the termination of this Agreement and continue in full force and effect thereafter.

**E. ASSIGNABILITY:** The Consultant will not assign any interest in this Agreement and will not transfer any interest in the same without the City's prior written consent.

**F. JURISDICTION & VENUE:** For all claims arising out of or related to this Agreement, the Consultant consents and yields to the exclusive jurisdiction of and venue in the state civil courts of the Parish of St. Tammany and formally waives any pleas or exceptions of jurisdiction on account of the residence, including any right of removal to federal court based upon diversity of citizenship.

**G. GOVERNING LAW:** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

**H. NON – WAIVER:** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such

noncompliance, right, default or breach will not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

**I. PERFORMANCE MEASURES:** The City will measure the performance of the Consultant according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

If the Consultant fails to perform according to the Agreement, the City will notify the Consultant. If there is a continued lack of performance after notification, the City may declare the Consultant in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting Consultant for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting Consultant.

**J. SEVERABILITY:** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part of the Agreement.

**K. RULES OF CONSTRUCTION:** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the City or the Consultant on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender.

**L. NO THIRD PARTY BENEFICIARIES:** This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

**M. NON – EXCLUSIVITY FOR THE CITY:** This Agreement is non-exclusive and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

**N. CONFLICT OF INTEREST:** To ensure that the Consultant's efforts do not conflict with the City's interests, and in recognition of the Consultant's obligations to the City, the Consultant will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Consultant will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Consultant's performance of this Agreement. The City will make the final determination whether the Consultant may accept the other employment.

**O. PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT:** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this Section, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the Consultant, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Consultant pursuant to this Agreement without regard to the Consultant's satisfactory performance of such Services.

**P. OWNERSHIP INTEREST DISCLOSURE:** The Consultant will provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Consultant and stating that no other person holds an ownership interest in the Consultant via a counter letter. For the purposes hereof, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Consultant fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Consultant, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**Q. SUBCONTRACTOR REPORTING:** The Consultant will provide a list of all persons, natural or artificial, who are retained by the Consultant at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Consultant's work for the city. In regard to any subcontractor proposed to be retained by the Consultant to perform work on the Agreement with the City, the Consultant must provide notice to the City within thirty (30) days of retaining said subcontractor. If the Consultant fails to submit the required lists and notices, the City may, after 30 days' written notice to the Consultant, take such action as may be necessary to cause the suspension of any further payments until such the required lists and notices are submitted.

**R. EMPLOYEE VERIFICATION:** The Consultant swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens;



(ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Consultant a sworn affidavit verifying compliance with items (i) and (ii) above. The Consultant acknowledges and agrees that any violation of the provisions of this paragraph may subject this Agreement to cancellation, and may further result in the Consultant being ineligible for any public contract for a period of three years from the date the violation is discovered. The Consultant further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the cancellation of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Consultant agrees to provide to the City a sworn affidavit attesting to the above provisions if requested by the City to do so; failure to provide such affidavit upon request shall give the City the option to cancel this Agreement.

S. **MODIFICATION:** This Agreement shall not be modified except by written amendment executed by authorized representatives of the parties.

T. **NON – SOLICITATION STATEMENT:** The Consultant swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Consultant has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement

U. **CONVICTED FELON STATEMENT:** The Consultant swears that No Consultant principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records. The Consultant will confirm same through affidavit provided by City.

V. **COMPLETE AGREEMENT:** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

## **ARTICLE XII. ELECTRONIC SIGNATURE AND DELIVERY**

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

**IN WITNESS WHEREOF**, the City and the Consultant, through their duly

authorized representatives, execute this Agreement.

**CITY OF MANDEVILLE**

**BY:** \_\_\_\_\_

**CLAY MADDEN, MAYOR**

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**FORM AND LEGALITY APPROVED:**

**Law Department**

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

**Printed Name:** \_\_\_\_\_

**KYLE ASSOCIATES, LLC**

**BY:** \_\_\_\_\_

**CHRISTOPHER J. HNATYSHYN, VICE-PRESIDENT**

\_\_\_\_\_  
**CORPORATE TAX I.D.**

**AFFIDAVIT**

STATE OF LOUISIANA

PARISH OF ST. TAMMANY

BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in this State and Parish, personally came and appeared:

Christopher J. Hnatyshyn

the party submitting a non-bid contract and who has submitted this affidavit with said contract, after being duly sworn did attest and testify as to the truth of all of the factual allegations contained in the petition, specifically as follows:

**Choose A or B. If Option A is indicated please include the requested attachment.**

Disclosure No. 1

A.  Within the 48 month period preceding the date of the contract with the City of Mandeville, I Have made campaign contributions which total \$200.00 or more to a Mandeville City Council member or Mayor of the City of Mandeville. I have attached a list of each contribution, its amount, the date of the contribution, and the recipient or recipients of the contribution.

B. \_\_\_\_\_ Within the 48 month period preceding the date of the contract with the City of Mandeville, I **Have Not** made campaign contributions which total \$200.00 or more to a Mandeville City Council member or Mayor of the City of Mandeville.

Disclosure No. 2

A. \_\_\_\_\_ I **Do** owe a debt or debts to an elected or appointed official or officials of the City of Mandeville. I have attached a list of all debts and the elected or appointed official or officials of the City of Mandeville to whom those debts are owed.

B.  I **Do Not** owe any debts to any elected or appointed official of the City of Mandeville.

Disclosure No. 3

A.  I **Have** made a contribution to or in support of elected officials of the City of Mandeville in the name of another person or firm directly or indirectly. I have attached a list of all contributions to or support of elected officials of the City of Mandeville, the amount of the contribution or support, the recipient or recipients of the contribution, and the name of the person or firm through whom the contribution was made.

B. \_\_\_\_\_ I **Have Not** made any contribution to or in support of elected officials of the City of Mandeville in the name of another person or firm directly or indirectly.

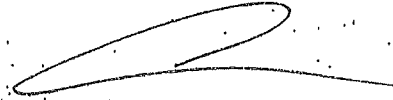
Disclosure No. 4

A.  This affidavit is being submitted on behalf of a corporation, LLC, or other legal entity. I have attached a list of contributions made by officers, directors, and owners, including employees, owning 25% or more of the company or legal entity.

B.  This affidavit is Not being submitted on behalf of a corporation, LLC, or other legal entity.

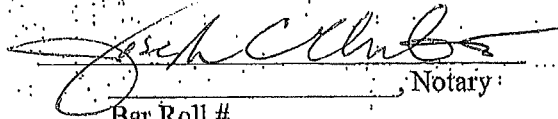
The above is in compliance and pursuant to City of Mandeville Ordinance No. 14-07.

I agree to and acknowledge that an updated affidavit must be submitted if there are any changes to the above sworn statements between the time the affidavit is executed and the time the contract is awarded.



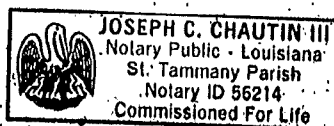
Christopher J. Hnatyshyn, AFFIANT  
Kyle Associates, LLC

SWORN TO AND SUBSCRIBED before  
me this 2nd day of November 2022.



\_\_\_\_\_, Notary

Bar Roll # \_\_\_\_\_  
My Commission Expires \_\_\_\_\_



Names of Elected Official	Office Held	Amounts	Date Contributed	Contributed By
Clay Madden Clay Madden Clay Madden Clay Madden	Mayor Mayor Mayor Mayor	\$250.00 \$500.00 \$1,000.00 \$1,000.00	January 2020 October 2020 October 2020 October 2022	Kyle Associates, LLC Christopher J. Hnatyshyn Kyle Associates, LLC Kyle Associates, LLC
Rick Danielson	Councilman-at-Large	\$250.00	February 2020	Franklin M. Kyle, III, President