

INTRODUCED BY COUNCIL MEMBER ZUCKERMAN AND SECONDED FOR
ADOPTION BY COUNCIL MEMBER _____

RESOLUTION NO. 22-49

**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 BURK-KLEINPETER, INC. AND PROVIDING FOR OTHER
MATTERS IN CONNECTION THEREWITH**

WHEREAS, the City desires to enter into a professional services agreement with Burk-Kleinpeter for professional engineering services for the Seawall Repair (Inspection) 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 Burk-Kleinpeter, Inc. 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

AFFIDAVIT

STATE OF LOUISIANA
Orleans
PARISH OF ST. TAMMANY

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

Henry M. Picard Jr

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.

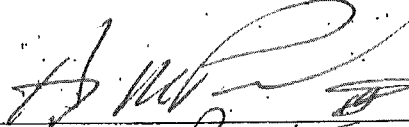
Disclosure No. 4

A. X 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.

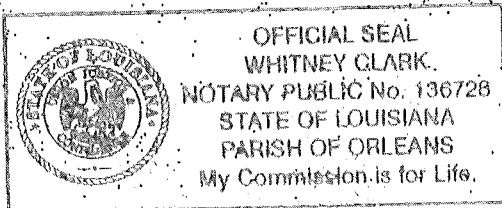
The above is in compliance and pursuant to City of Mandeville Ordinance No. 14-07.

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.


Henry M. Pizarro, AFFIANT
Senior Vice President

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


Whitney Clark, Notary
Bar Roll # 136728
My Commission Expires For Life



NOTARY ATTESTATION ONLY
NOTARY DID NOT PREPARE
THIS DOCUMENT.

Contributions to Council Members or Mayor of the City of Mandeville

Date of Contribution	Amount	Recipient(s)
<i>None</i>		

Debts Owed to Appointed or Elected Officials of the City of Mandeville

Amount of Debt	Elected or Appointed Official Owed Debt
None	

Contributions Made in the Name of Another

Date of Contribution	Amount	Recipient	Contributor
None			

Contributions Made by Officers, Directors, Owners, and/or Employees

Date	Amount	Recipient	Contributing Officer, Director, Owner, or Employee	% Share of Company
06/01/21	\$350.00	Clay Madden	Corporation	100%
05/09/22	\$500.00	Clay Madden	Corporation	100%
10/10/22	\$500.00	Clay Madden	Corporation	100%

CITY OF MANDEVILLE
DISCLOSURE OF OWNERSHIP

STATE OF LOUISIANA
PARISH/ COUNTY OF Orleans

BEFORE ME, the undersigned Notary in and for the parish/county herein above shown, personally came and appeared the undersigned who, after being duly sworn, did depose and say that Burk-Kleinpeter, Inc. is contracting with the City of Mandeville and listed below are the names and addresses of all persons or corporate entities who hold ownership interest in the company or who hold by proxy the voting power in the company and, if anyone is holding stock in his/her own name that actually belongs to another, the name of the person(s) for whom held, including stock held pursuant to a counter letter.

1. Persons or entities with ownership interests in the company:

<u>Michael D. Chopin</u>	<u>4921 Henican Place, Metairie, LA 70003</u>
Name	Address
<u>John W. Giardina, Jr.</u>	<u>47 Derbes Drive, Gretna, LA 70053</u>
Name	Address
_____	_____
Name	Address

2. Persons or entities who hold by proxy the voting power:

_____	_____
Name	Address
_____	_____
Name	Address
_____	_____
Name	Address

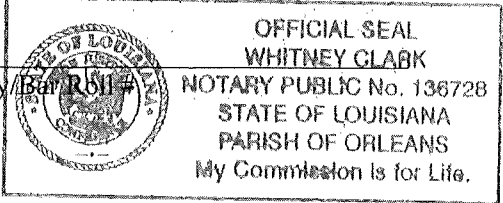
3. Stock held for others and for whom held:

_____	_____
Name	Address
_____	_____
For Whom Held	Address
_____	_____
Name	Address
_____	_____
For Whom Held	Address
_____	_____
Name	Address
_____	_____
For Whom Held	Address

Sworn to and subscribed before me, the undersigned Notary Public, on this date: 11/02/22

Henry Picarda Senior Vice President
Corporation Representative

NOTARY AS TO WHITNEY CLARK ONLY
NOTARY DID NOT PREPARE THIS DOCUMENT.
Notary signature, Printed name and Notary Public # Whitney Clark, #136728



CODE OF CONDUCT

A. POLICY STATEMENT.

The citizens of the City of Mandeville rightfully expect elected municipal officials, unclassified employees and appointed personnel to adhere to the highest standards of professional and ethical conduct in the performance of their duties and responsibilities. The City of Mandeville Personnel Policies and Police Standard Operating Procedures Manual specifies the conduct of the classified civil service employee so that this code does not apply to this class of city employees. This code applies to the following persons:

- Elected municipal officials of the City of Mandeville.
- Unclassified employees of the City of Mandeville.
- Persons appointed or elected to the various boards and commissions of the City of Mandeville.
- Contractors as described in Section D of this code. Contractors are not obligated to participate in the training requirements of this code but will be required to demonstrate that they are familiar with this code and the Louisiana State Code of Ethics.

While this document in and of itself is not punitive in nature, it complements the existing laws incorporated in the Louisiana State Code of Ethics and other existing policies that cover persons employed by the City of Mandeville. All elected municipal officials, unclassified employees and appointed personnel of the city in whatever capacity should know that infractions of this Code of Conduct may also be violations prohibited by state ethical rules and regulations which do carry punitive provisions.

Every person covered by this Code has a unique position of trust in the community and, therefore, assumes a special responsibility to act with the highest standards of honesty, fidelity and fairness. Said persons should conduct themselves in a manner that merits public trust and confidence.

B. PURPOSE OF THIS POLICY.

Section 7-02 of the City Charter for the City of Mandeville provides that "All officers and employees of the city government shall comply with the provisions of the Louisiana State Code of Ethics pertaining to local government." The purpose of the Code of Conduct is to complement the Code of Ethics with a code that requires conduct over and above the strict adherence to the letter of the general law and the Louisiana State Ethics Code. To establish a set of guidelines for the behavior of the persons covered by this code which will enhance the effectiveness of city government while maintaining the high standards of quality and professionalism necessary for the city to successfully project the best image possible.

**C. CITY OF MANDEVILLE CODE OF CONDUCT FOR ELECTED,
UNCLASSIFIED EMPLOYEES AND APPOINTED PERSONNEL.**

All persons in each category as defined by the above title shall sign a copy of this Code of Conduct thereby acknowledging that they have received a copy and understand that it is therefore their responsibility to comply with this Code of Conduct and any revisions to it as follows:

1. Adhere to the principle that all activities undertaken by persons covered by this code shall be in the best interests of the citizens of the city and with the goal of perfection of city government. That no personal gain or benefit, except for compensation and benefits accompanying applicable personnel, should be accepted.
2. Accept the responsibility that any improper conduct can reflect negatively on the public image of the city and bring embarrassment and discontent to the citizens of the city. It is the intent of this Code of Conduct to make the persons covered by this code aware, through training, of the existing laws and city rules and regulations of employment that are designed to respond to any improper conduct in whatever context.
3. Participate in a comprehensive training program regarding the Louisiana State Code of Ethics and this Code of Conduct for all levels of personnel defined by this Code of Conduct except Contractors. This training shall include, but not be limited to, ongoing small and large group training sessions highlighting general rules of conduct and specific rules of conduct pertaining to elected municipal officials, unclassified employees or appointed personnel. This training shall amplify what personnel can or cannot do in complying with the Louisiana State Code of Ethics and this Code of Conduct. It shall also identify and help personnel recognize potential conflicts of interest and provide mechanisms for alerting the proper officials of such potential conflicts. Each person covered by this code, except Contractors, shall be required to participate in at least two hours of training per calendar year. These hours shall be certified to the Personnel Director and be a part of the person's record.
4. Always be in full compliance with all applicable federal, state and local laws and regulations.
5. Direct all requests for documents under the Public Records law to the City Attorney for response. All requests for documents under the Public Records law shall be in writing.
6. Respect the confidentiality of information concerning the City, City personnel or proceedings of the City.

D. CONTRACTORS.

Any individual or business entity that enters into a contract with the City of Mandeville shall be subject to this code and be referred to herein as a "Contractor". Every Contractor shall be mindful of the principles of law relating to the Code of Governmental Ethics of the State of Louisiana. The Contractor shall not make or authorize any payment or give anything of value directly or indirectly to an official of this government for the purpose of influencing an act or decision of official capacity or for assisting in obtaining or retaining business for or with, or for direction of business to any person. Likewise, the Contractor will not make or authorize any payment to anyone for the purpose of influencing any official act or decision or inducing such entity or person to use any influence with this government to assist anyone in obtaining or retaining business for or with, or directing business to, any person. Any breach or violation of this clause by the Contractor shall be considered a substantial and material breach of its contract with the City of Mandeville.

That all Contractors shall sign an affidavit in the form attached hereto as Attachment A as a condition of their contract with the City of Mandeville.

E. COMPLAINTS.

All complaints shall be in writing and signed by the person making the complaint. There shall be no "anonymous complaints". Any person wishing to file a complaint regarding any person covered by this code shall send the complaint to the City Attorney's Office where a log will be kept of such complaints. A copy of any complaint regarding any person covered by this code shall be sent to the person complained of within three days of the receipt of the complaint. The person complained of shall have five days to respond in writing to the complaint and his or her response shall be part of the complaint record. If such complaint alleges ethical violations, then the City Attorney shall recommend to the person making the complaint that he or she forward a copy of the complaint to the Louisiana Board of Ethics for further action.

Any person who wishes to make a complaint to the Louisiana Board of Ethics may do so by sending the complaint to Louisiana Ethics Administration Program, P.O. Box 4368, Baton Rouge, LA, 70821 or call the Board office at (225) 219-5600.

ATTACHMENT "A"

CODE OF CONDUCT AFFIDAVIT

STATE OF LOUISIANA

PARISH OF Orleans

AFFIDAVIT

BEFORE ME, the undersigned Notary Public personally came and appeared:

Bark-Klempeter, Inc; if a corporation, LLC, or partnership, then the affidavit may be signed by corporate officer, member or partner stating that the subject organization is aware of the Code of Governmental Ethics.

Who, after first being duly sworn did depose and say he/she is the president, corporate officer, or designee of Henry M Pizard II and that he/she is familiar with the Code of Governmental Ethics contained in Louisiana Revised Statutes at Title 42, Chapter 15 and is familiar with and has a copy of the Code of Conduct for the City of Mandeville; and

That, Bark-Klempeter, Inc will conform to the provisions in the Code of Governmental Ethics and the Code of Conduct as a condition of any contract between the company and the City of Mandeville, Louisiana; and

That, the provisions of the Code of Governmental Ethics and the Code of Conduct shall apply to any subcontract that the contractor has with any other entity in the performance of its contract with the City of Mandeville, Louisiana and there shall be a statement in every subcontract to that effect,

WITNESSES:

CONTRACTOR: Bark-Klempeter, Inc
By: Henry M Pizard II
Senior Vice President

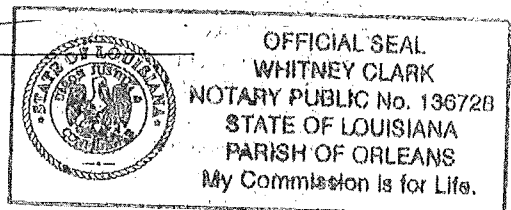
Erin Brady
ERIN BRADY
Robin Caldwell

Sworn to and subscribed before me this 2nd day of November, 2010. 2022

NOTARY PUBLIC PREPARED THIS DOCUMENT ONLY
NOTARY DID NOT PREPARE THIS DOCUMENT.

00480-4

Whitney Clark



CHAIRMAN OF THE BOARD
J. W. "BILL" GIARDINA, JR., PE

CORPORATE SECRETARY
BRUCE L. BADON, AICP



PRESIDENT & CEO
MICHAEL D. CHOPIN, PE

SENIOR VICE PRESIDENTS
RENE A. CHOPIN, III, PE
HENRY M. PICARD, III, PE, PLS

VICE PRESIDENT
DAVID E. BOYD, PE

BURK-KLEINPETER, INC.
ENGINEERING · PLANNING · ENVIRONMENTAL

2895 HIGHWAY 190
MANDEVILLE, LA 70471
TELEPHONE (985) 727-6769
WWW.BKIUSA.COM

OVER 100 YEARS OF SERVICE

October 18, 2022

Mayor Clay Madden
City of Mandeville
3101 East Causeway Approach
Mandeville, LA 70448

Re: Old Mandeville Seawall Repair Study
BKI No. NO.22.XXX

Dear Mayor Madden:

BKI is pleased to submit the attached fee proposal and project schedule for the Old Mandeville Seawall Repair Study. Burk-Kleinpeter, Inc. and Specialty Diving of Louisiana will be performing the work. We appreciate the City's confidence in us to provide this work.

If you should have any questions or comments, please call us.

Sincerely,

BURK - KLEINPETER, INC.
ENGINEERS, PLANNERS, ENVIRONMENTAL

A handwritten signature in black ink, appearing to read 'H. M. Picard, III'.

Henry M. Picard, III P.E., P.L.S.
Senior Vice President



CITY OF MANDEVILLE, LA
 WORK ORDER NO. TBD
 Old Mandeville Seawall Repair

Burk-Kleinpeter, Inc.
 Old Mandeville Seawall Repair
 Fee Proposal

MANHOUR ESTIMATES

SCOPE ITEM	DESCRIPTION	SHEETS	0001 PRINC. \$321.00	0002 PRIN ENG \$288.00	0003 SEN. PROJ. MGR. \$205.00	0004 CIVIL E. \$142.00	0005 CIVIL INT. \$108.00	0006 ENV. E. \$168.00	0007 MECH. E. \$142.00	0008 ELEC. E. \$142.00	0009 STRC. E. \$142.00	0010 SR CADD TECH. \$129.00	0011 CADD TECH. \$92.00	0012 CLERICAL \$69.00	0013 RES INSP \$82.00	TOTAL	
A PREPARATION FOR INSPECTION																	
1	Review of Owner Furnished Items		0	1	2	0	4	0	0	0	0	0	0	0	0	0	1,128.00
2	Prepare Inspection Document Plans		0	0	2	4	8	0	0	0	0	0	0	0	0	0	1,842.00
3	Project Meetings with the City of Mandeville (4)		0	4	4	0	0	0	0	0	0	0	0	2	0	0	2,102.00
TOTAL HOURS			0	5	8	4	12	0	0	0	0	0	0	2	0	0	31
COST			\$0.00	\$1,430.00	\$1,640.00	\$568.00	\$1,296.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$138.00	\$0.00	\$0.00	\$5,072.00
B SEAWALL INSPECTION																	
1	Coordination with Specialty Diving of LA (65 Locations)		0	1.5	3	12	24	0	0	0	0	0	0	0	0	0	5,340.00
2	Sheepile Cap Inspection (7400 LF)		0	0	0	24	24	0	0	0	0	0	0	0	0	0	6,000.00
3	Stair Inspection (12)		0	0	0	12	12	0	0	0	0	0	0	0	0	0	3,000.00
4	Site Visits to Review Sheepile Wall Damage (8)		0	4	4	16	16	0	0	0	0	0	0	0	0	0	5,964.00
TOTAL HOURS			0	5.5	7	64	76	0	0	0	0	0	0	0	0	0	152.5
COST			\$0.00	\$1,573.00	\$1,435.00	\$9,088.00	\$8,208.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,304.00
C EVALUATE DATA FROM INSPECTIONS																	
1	Assemble Data Collected		0	4	8	16	32	0	0	0	0	0	0	0	0	0	8,512.00
2	Sheet Pile Evaluation		0	8	16	32	0	0	0	0	0	0	0	0	0	0	10,112.00
3	Sheepile Cap Evaluation		0	5	10	20	40	0	0	0	0	0	0	0	0	0	10,640.00
4	Overall Sheepile Wall Evaluation		0	4	8	16	16	0	0	0	0	0	0	0	0	0	5,056.00
TOTAL HOURS			0	21	42	84	72	0	0	0	0	0	0	0	0	0	219
COST			\$0.00	\$6,006.00	\$8,610.00	\$11,928.00	\$7,776.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$34,320.00
D RECOMMENDATIONS																	
1	Analyze Short/Long Term Repair Options		0	4	8	16	0	0	0	0	0	0	0	0	0	0	5,056.00
2	Prepare Schematic Plans		0	2	4	8	16	0	0	0	0	0	16	0	0	0	5,728.00
3	Prepare Budgetary Opinion of Repair Costs		0	2	4	8	0	0	0	0	0	0	0	0	0	0	2,528.00
4	Prepare DRAFT Sheepile Report		0	4	8	24	24	0	0	0	0	0	0	0	0	0	8,784.00
5	Oversight/Technical Review		4	8	0	0	0	0	0	0	0	0	0	0	0	0	3,572.00
6	Prepare FINAL Sheepile Report		0	2	4	8	8	0	0	0	0	0	0	0	0	0	3,992.00
TOTAL HOURS			4	22	28	64	46	0	0	0	0	0	16	0	0	0	182
COST			\$1,284.00	\$6,282.00	\$5,740.00	\$9,088.00	\$5,184.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,472.00	\$0.00	\$0.00	\$0.00	\$29,080.00
TOTAL HOURS			4	54	85	216	208	0	0	0	0	0	16	2	0	0	585
TOTAL COST			\$1,284.00	\$16,301.00	\$17,425.00	\$30,672.00	\$22,464.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,472.00	\$138.00	\$0.00	\$68,756.00
Other Direct Costs																	
Subtotal Basic Services																	
Specialty Diving of LA																	
Topographic Survey																	
PART 1 TOTAL DETAILED INSPECTION																	
\$249,942.00																	

CITY OF MANDEVILLE, LA
 WORK ORDER NO. TBD
 Old Mandeville Seawall Repair

Burk-Klempeter, Inc.
 Old Mandeville Seawall Repair
 Fee Proposal

SCOPE ITEM	DESCRIPTION	SHEETS	0001 PRINC.	0002 PRIN/ENG	0003 SEN PROJ. MGR.	0004 CIVIL E.	0005 CIVIL INT.	0006 ENV. E.	0007 MECH. E.	0008 ELEC. E.	0009 STRUC. E.	00010 SR CADD TECH.	00011 CADD TECH.	00012 CLERICAL	00013 RES INSP	TOTAL
			\$327.00	\$285.00	\$203.00	\$142.00	\$108.00	\$168.00	\$142.00	\$142.00	\$142.00	\$129.00	\$92.00	\$69.00	\$82.00	

MANHOUR ESTIMATES

SCOPE ITEM	DESCRIPTION	INSPECTION VESSEL (PER DAY)	FUEL (PER GAL.)	VESSEL TRAILERING (PER MI)	BLUELINES (PER SF)	8 1/2 X 11 COPIES (EACH)	11 x 17 COPIES (EACH)	TOTAL
1	Detailed Inspection	\$650.00	\$4.00	\$3.50	\$0.20	2,000	20	\$204.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00
TOTAL UNITS		0	0	0	0	2,000	20	\$204.00
TOTAL OTHER DIRECT COSTS		\$0.00	\$0.00	\$0.00	\$0.00	\$200.00	\$4.00	\$204.00

OTHER DIRECT COSTS

Assumptions:
 Inner Harbor Navigation Canal level will be 1.0' or less at the Seabrook Gage



Seawall Inspection
Burk-Kleinpeter, Inc.
BD221042Rev.1

Submitted To:

Henry M. Picard III
Senior Vice President
Burk-Kleinpeter, Inc.
P.O. Box 19087
New Orleans, LA 70179-0087
Phone: (504) 483-6258
Cell: 504) 400-0783
Email: hpicard@bkiusa.com

October 10, 2022



October 10, 2022

Henry M. Picard III
Senior Vice President
Burk-Kleinpeter, Inc.
P.O. Box 19087
New Orleans, LA 70179-0087
Phone: (504) 483-6258
Cell: 504) 400-0783
Email: hpicard@bkusa.com

RE: Seawall Inspection
Bid: BD221042Rev.1

Dear Mr. Picard:

Specialty Diving of LA, Inc. would like to thank you, for considering our services to complete the above-referenced project. All work would be accomplished with the highest regard for safety and quality, and performed in accordance with the general provisions as stated in our current published schedule of rates.

Please make note that Specialty Diving of LA, Inc. is a **Woman-Owned** certified business.

This proposal is based upon both parties entering into a contract with mutually agreeable terms and conditions. Contractor has based its proposal on the information provided by the Company in its original request for Contractor proposal. Any differences between this information and actual field conditions will be cause for Contractor to adjust its price. Any services not addressed in this proposal will be provided in accordance with the aforementioned schedule of rates.

This proposal will remain firm for a period of 30 calendar days from this date, and is subject to the availability of listed services upon job commencement.

We appreciate the opportunity to serve you, and look forward to working with you in the future. Please feel free to contact us should you have any questions, or to discuss how we should proceed, at (985) 542-8770.

Respectfully,

Marshall Whitmer
Vice President

Seawall Inspection

To inspect major damage areas of seawall and to do overall total inspection
This would include complete inspection 100' each side of major damage area.
In addition, this would include total inspection of remaining seawall with U/T
readings every 120' for base line of wall.

20 Days @ \$ 7,864.60Day	\$ 157,292.00
Mob/Demobe	\$ 3,690.00
<hr/>	
	Total: \$ 160,982.00
 Any additional work Day Rate	 \$ 8,136.00/Day
 Inspect South Break Wall (Same Mob)	 \$ 8,136.00/Day
 Inspect West Seawall	 \$ 16,272.00 Total
 Repair Damage under this Mob	 \$ 864.00/Hr
+ Splash Zone Epoxy	\$ 265.00/Kit

Any land repair will be billed at Cost + 12%

Accepted By: _____
(Please Print Name)

(Please Sign & Date)

General Clarifications/Qualifications

1. All operations and invoicing to be in accordance with an existing MSA or with the terms and conditions stated in Specialty Diving of Louisiana, Inc.'s current schedule of rates.
2. This proposal is subject to a mutually agreed upon contract.
3. Starting time for this project shall be mutually agreed between the parties giving consideration to availability of contractor's personnel, equipment materials, marine vessels, and favorable weather conditions.
4. This proposal shall remain valid for a period of thirty (30) days.
5. All invoices payable NET 30 days. Interest at a maximum rate allowable by law will be charged on past due accounts.
6. All rates quoted do not include all typical Federal, State or local taxes. (except payroll taxes)
7. All diving operations are conducted in compliance with regulations in accordance with OSHA, United States Coast Guard, ADCI "Consensus Standards for Commercial Diving" and applicable statutory requirements.
8. Specialty Diving of Louisiana, Inc. (contractor) agrees to abide by the safety regulations of customer as specified.
9. Burk-Kleinpeter, Inc. (company) will be responsible for the provision of all permits (Federal, State of Louisiana, or Louisiana Wildlife and Fisheries) and licenses as required by governmental agencies for the performance of their work.
10. All day rates shall commence upon arrival of personnel and equipment at dock and shall continue until departure from dock or when demobilization is completed. Travel rates may apply to/from shop. **If personnel are turned around at the dock/job site before work begins, without prior notice then a twelve (12) hour day rate will apply for personnel and any rental equipment.
11. Any third party costs incurred for a job that is cancelled will be billed at cost + 15%.
12. Mobilization/Demobilization is per occurrence. Any additional Mobilization or Demobilization at the Company's request will initiate additional charges at the quoted rate.
13. Due to recent and impending force major weather events, the ability to fulfill the requirements of the proposal shall be based upon the availability of vessels, personnel and equipment and maybe subject to price change.
14. Any weather downtime caused by a system that becomes a numbered or named tropical depression, storm or hurricane, including downtime prior to and after numbering and/or naming, shall be for Company's account.
15. In the event of an eminent weather system that would compromise the safety of personnel and equipment, Contractor will be allowed to secure the work and head for sheltered waters at the time Contractor deems necessary to ensure safety of personnel and equipment or as mandated by Coast Guard required operational procedures.

16. All applicable cost including by not limited to demobilization/remobilization, standby for associated equipment and personnel, etc. in connection with weather (named storms) and/or events beyond contractors control shall be to company's account. Contractor will follow our company's severe weather guidelines.
17. In all cases, the Diving Supervisor will solely determine if weather or site conditions allow for safe diving operations.
18. Pricing is contingent on uninterrupted work. Any delays or standby time incurred that are not in the control of Specialty Diving of Louisiana, Inc. will be billed at the quoted work rate until such time that work can resume.
19. Pricing is offered and is contingent on client request for inspection services. Management of change documentation will be required to perform tasks that were not included in the initial request for quotation package. Extra work rate will apply to tasks that were not identified in the request for quotation package.
20. Pricing is in assumption of 40' of water or less. Management of change documentation will be required to perform tasks the require use of a 50' Diving Decompression table or deeper. Rate changes may apply following management of change.
21. Should contractor be awarded this work and any pre-job meetings or other non-scheduled trips be required by Company, personnel day rates and any transportation expenses incurred shall be charged in accordance with quoted rates or our schedule of rates as applicable.
22. Quotes day rates are based on a twelve (12) hour day for personnel and equipment. A minimum twelve (12) hour day rate will be charged for personnel per day. Personnel who work in excess of twelve (12) hours per day will be charged at quoted overtime rates.
23. Technical or medical personnel required to assist in diving emergencies will be billed at cost. The job is not over until decompression has been completed.
24. In the event maintenance, repair and/ or replacement of equipment comprising of the Dive Spread due to normal wear and tear causes downtime in the critical path of the Work, (2) hours of down time in a calendar day will be allowed, without reducing the Dive Spread Day Rate. This downtime allowance is cumulative per day up to twenty-four (24) hours per calendar month.
 - Downtime in the critical path of the Work is defined as that time when productive work cannot be performed until the maintenance, repair and/or replacement of the Equipment is completed.
25. Other than normal wear and tear, Company will be responsible for repair or replacement (at cost plus 15%) of any third party equipment provided by Contractor at the request of Company that is damaged by no fault of Contractor during the performance of the Work.
26. All signed time tickets indicate approval of work by the customer.
27. Crane and dock charges are to be billed to Company's account, or at cost + 15% if billed to Specialty's account.
28. Company shall provide a secure location for the storage of Contractor's equipment.
29. All diving consumables, trucking/transportation and demurrage will be charged in accordance with current schedule of rates or cost plus 15%.

30. Re-supply and personnel crew change transportation will be charged in accordance with quoted rates or our schedule of rates as applicable.
31. **THIRD PARTY EQUIPMENT:**
Contractor constantly monitors the types and quality of VESSELS and EQUIPMENT available to supplement our own vessels and support gear. We offer procurement for such equipment as a service to our customers. The rate for this is cost + 15% with cost supported by the original third party invoice.
CONTRACTOR DOES NOT ACCEPT RESPONSIBILITY FOR THE BREAKDOWN OF THIRD PARTY VESSELS OR EQUIPMENT. Since Contractor neither owns nor controls the maintenance of this equipment, Contractor cannot take responsibility for breakdown of equipment.
32. Any equipment not quoted in this estimate will be charged at Specialty Diving of Louisiana's published rate.
33. Demurrage will be billed at \$2.20 per bottle, per day.
34. Due to COVID-19 Pandemic causing closures out of our control, subsistence pricing is subject to change.

City of Mandeville, LA
Old Mandeville Seawall Repair Study Project

Project Schedule

Task No.	Task Description	Duration	2023														
			Jan.	Feb.	Mar.	Apr.	May	Jun.	July	Aug.	Sep.	Oct.	Nov.	Dec.			
B1a	Special Diving Seawall Inspection	1 Mon.															
B1b	Specialty Diving Report Preparation	2 Wks.															
B2, B3	BK1 Cap, and Stair Inspection	1 Mon.															
C1 - C4	Evaluate Data from Inspections	1 Mon.															
D1 - D3	Repair Options, Schematic Plans, Cost Estimates	1 Mon.															
D4	Prepare Draft Report	2 Wks.															
D5 -D6	City of Mandeville Review	2 Wks.															
	Prepare Final Report	2 Wks.															

NON-CONVICTION AFFIDAVIT

STATE OF LOUISIANA
PARISH OF Orleans

BEFORE ME, THE UNDERSIGNED AUTHORITY, PERSONALLY CAME AND APPEARED Henry M. Picard III, WHO AFTER BEING BY ME DULY SWORN, DEPOSED AND SAID THAT HE IS THE FULLY AUTHORIZED Senior Vice President OF Berk-Klempeter Inc (HEREIN AFTER REFERRED TO AS BIDDER) THE PARTY WHO SUBMITTED A BID FOR Mandeville Sewage Inspection, BID NO. _____ AND SAID AFFIANT FURTHER SAID:

He/she personally has not been convicted of, nor has he/she entered a plea of guilty or nolo contendere to any of the crimes or equivalent federal crimes listed below. No individual partner, incorporator, director, manager, officer, organizer, or member, who has a minimum of a ten percent ownership in the bidding entity, has been convicted of, or has entered a plea of guilty or nolo contendere to any of the crimes or equivalent federal crimes listed below.

A conviction of or plea of guilty or nolo contendere to the following state crimes or equivalent federal crimes shall permanently bar any person or the bidding entity from bidding on public projects:

- (a) Public bribery (R.S. 14:118).
- (b) Corrupt influencing (R.S. 14:120).
- (c) Extortion (R.S. 14:66).
- (d) Money laundering (R.S. 14:230).

A conviction of or plea of guilty or nolo contendere to the following state crimes or equivalent federal crimes shall bar any person or the bidding entity from bidding on public projects for a period of five years from the date of conviction or from the date of the entrance of the plea of guilty or nolo contendere:

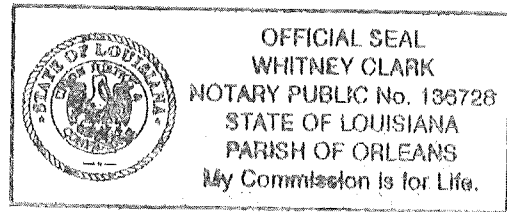
- (a) Theft (R.S. 14:67).
- (b) Identity Theft (R.S. 14:67.16).
- (c) Theft of a business record (R.S. 14:67.20).
- (d) False accounting (R.S. 14:70).
- (e) Issuing worthless checks (R.S. 14:71).
- (f) Bank fraud (R.S. 14:71.1).
- (g) Forgery (R.S. 14:72).
- (h) Contractors; misapplication of payments (R.S. 14:202).
- (i) Malfeasance in office (R.S. 14:134).

The five-year prohibition provided for in this section shall apply only if the crime was committed during the solicitation or execution of a contract or bid awarded pursuant to these provisions. If evidence is submitted substantiating that a false attestation has been made and the project must be readvertised or the contract cancelled, the awarded entity making the false attestation shall be responsible to the public entity for the costs of rebidding, additional costs due to increased costs of bids and any and all delay costs due to the rebid or cancellation of this project.

[Signature]
AUTHORIZED SIGNATURE

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 2nd
DAY OF November, 20 22

[Signature]
NOTARY PUBLIC
2nd day of November, 2022



NOTARY PUBLIC
NOTARY DID NOT RECALIBRATE
THIS DOCUMENT

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF

MANDEVILLE AND

BURK-KLEINPETER, INC.

COM PROJ. NO. 100.21.019

SEAWALL REPAIR (INSPECTION)

PROJECT

THIS AGREEMENT (the “**Agreement**”) is entered into by and between the City of Mandeville represented by Mayor Clay Madden (the “**City**”), and Burk-Kleinpeter, Inc. represented by Henry M. Picard, III, PE, PLS, Senior 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 18 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 Old Mandeville Lakefront Seawall was constructed 30+ years ago. A condition assessment of the underwater sheet piling is necessary to determine the remaining life expectancy for 1) investigation of current/immediate repairs 2) determine the remaining life expectancy for the knowledge of future maintenance repairs 3) determine its full replacement year. Engineer shall conduct underwater inspection through specialty subconsultant. Incidental repairs can be performed during the inspection if requested by the City.

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 provided, 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.

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.

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 report, plans, specifications, and 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.

The Consultant is responsible for the relevance and accuracy of items and details included in the report, 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 two (2) phases of work identified in general as follows and more fully described below:

- | | |
|-----------|----------------------------|
| Phase I. | Seawall Inspection |
| Phase II. | Findings/Assessment Report |

PHASE I. SEAWALL INSPECTION

Seawall Inspection (45 calendar days)

The seawall inspection will inspect major damage areas of the Lakeshore Drive Seawall and to perform an overall inspection. This includes complete inspection 100' on each side of major damage areas and would include total inspection of the remaining seawall with U/T readings every 120' for baseline of the seawall

PHASE II. FINDINGS/ASSESSMENT REPORT

Final Report Submittal (120 calendar days)

Final Report Scope of Work shall include the following:

Preparation for Inspection:

- Consultant is to prepare for inspection by reviewing Owner furnished items such as-built drawings and geotechnical/structural reports
- Correspondence and Project Meetings with City

Engineer's Review of Seawall Inspection

- Coordination with Specialty Diving of LA on inspection locations (65 locations)
- Consultant inspection of sheetpile cap (approximately 7400 linear feet)
- Stair inspection (12 locations)
- Site visits to review sheetpile wall damage (8 locations)

Evaluation of data from diver inspections

- Assemble all diver data collected and review
- Evaluation of sheetpile Data
- Evaluation of sheetpile Cap
- Overall sheetpile wall evaluation

Findings and Recommendations

- Analyze short/long term repair options including budgetary opinion of repair costs
- Prepare schematic plans

- Prepare Draft Report with all above information
- Prepare Final Report for Submittal to City

At minimum 5 sets each of hard copies and electronic files of Draft Report and Final Report shall be furnished to the City for submittal. 22"x34" full size plans of drawings may be requested of the consultant by the City if necessary. Final Report shall be signed and sealed by a Professional Engineer (Louisiana).

Comments on Draft Report from the City must be tracked and responded in an organized manner (comment response form) in a separate document.

Phase II Deliverables:

1. Final Inspection Report from Specialty Diving
2. Draft Report Submittal from BKI
 - Shall include all BKI inspection findings
3. Final Report Submittal from BKI
 - Shall include all BKI inspection findings

SUPPLEMENTAL PHASE – REPAIRS DURING INSPECTION:

These services are to be performed during the Phase I seawall inspection. Emergency damages will be identified by the Consultant and reported to the City for approval for repair during the inspection. Repairs will be completed at the hourly rate as proposed in the Consultant's proposal and will have a maximum not to exceed as specified in Article IV.

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 report phase as soon as necessary, concurrent with or immediately after the inspection 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 SEAWALL INSPECTION: The services to be performed during the Inspection Phase shall be completed within **FORTY-FIVE (45)** calendar days from the date of issuance of the Notice to Proceed for this phase.

E. PHASE II FINDINGS/ASSESSMENT REPORT: The services to be performed during the Preliminary Design Phase shall be completed within **ONE-HUNDRED (120)** calendar days from the date of issuance of the Notice to Proceed for this phase.

F. 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.	Seawall Inspection	\$160,982.00	(Not to Exceed)
PHASE II.	Findings/Assessment Report	\$88,960.00	(Lump Sum)
SUPPLEMENTAL PHASE	DIRECT COSTS (PRINTING)	\$204.00	(Not to Exceed)
SUPPLEMENTAL PHASE	Repairs During Inspection (Allowance)	\$25,000.00	(Not to Exceed)

B. MAXIMUM AMOUNT: The maximum aggregate amount payable by the City for all services performed under this Agreement is **\$275,146.00**. 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: _____

BURK-KLEINPETER, INC.

BY: _____

Henry M. Picard, III, PE, PLS, Senior Vice President

CORPORATE TAX I.D.