

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

RESOLUTION NO. 24-18

**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 Associates, LLC for the final design and coordination with the Louisiana Department of Transportation and Development (“DOTD”), as well as bidding, construction, engineering, and inspection for the new landscaping and lighting for Girod Street from Montgomery Street to U.S. Highway 190 in the City of Mandeville.

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 landscape architectural 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 _____, 2024.

Kristine Scherer
Clerk of Council

Jason Zuckerman
Council Chairman



April 11, 2024

Mr. David G. LeBreton, P.E., PTOE, PTP
Vice President
Digital Engineering & Imaging, Inc.
3500 US Hwy 190
Mandeville, LA 70471
Email : dlebreton@deii.net

**Re: Detailed Cost Proposal for
Girod Street Landscaping & Lighting, Phase 3
Final Design, Bidding and Construction Services**

Dear Mr. LeBreton:

In accordance with the request from your office, Kyle Associates, LLC (KA) is pleased to present the following proposal for the final design, bidding and construction engineering/inspection services necessary for the completion of the design and then construction associated with the Girod Street Landscaping & Lighting, Phase 3 project. KA shall provide the consulting services for this project in accordance with the tasks outlined below:

Phase IV(a) – Final Design

Kyle Associates will provide final construction plans, specifications, bid documents and construction cost estimate for the referenced project to meet the standard requirements of the DOTD's general format and content. This phase shall include Advance Check sets in response to plan-in-hand comments and then a Final Bid Submittal addressing all comments.

It is anticipated that this phase of the project will take approximately 60 calendar days to complete depending upon the timeframe between submitting Advance Check Sets to DOTD and receipt of comments to develop the Final Bid Submittal. Fee for this phase of the project shall be a lump sum amount of \$20,000.

Phase IV(b) – Bid & Award

Kyle Associates shall attend the pre-bid conference and address any questions regarding the work. Kyle Associates shall also prepare any addenda in response to bidder's questions. Kyle Associates shall also attend the bid opening, prepare bid tabulations and award recommendation letter.

It is anticipated that this phase of the project will take approximately 45 calendar days to complete. Fee for this phase of the project shall be a lump sum amount of \$2,500.

Phase V(a) – Construction Engineering

Kyle Associates shall provide construction administration/engineering services necessary for the successful completion of the referenced project. This effort shall include scheduling/attending the pre-construction conference, coordinating with city personnel on any relocations/adjustments due to site issues, review submittals/shop drawings, address contractor questions, attend construction meetings/site visits as necessary, develop as-built drawings, etc. in accordance with DOTD requirements.

It is anticipated that this phase of the project will take approximately 60 working days to complete upon issuance of Notice-to-Proceed to contractor. Fee for this phase of the project shall be billed on an hourly basis in accordance with the attached rate schedule with an estimated amount of \$20,000.


Phase V(b) – Inspection

Kyle Associates shall provide full-time resident inspection services for the duration of the construction of the referenced project. This effort shall include maintaining construction field records, coordinating any field testing, reviewing monthly pay estimates, ensuring construction activities are performed in accordance with DOTD requirements, etc.

It is anticipated that this phase of the project will take approximately 60 working days to complete upon issuance of Notice-to-Proceed to contractor. Fee for this phase of the project shall be billed on an hourly basis in accordance with the attached rate schedule with an estimated amount of \$45,000.

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 drainage project.

With regards,



James E. Powell, Jr., P.E., P.L.S.
Sr. Vice President – Engineering Operations



HOURLY RATE SCHEDULE
for
PROFESSIONAL SERVICES
Effective January 1, 2024

Principal	\$225.00
Senior Registered Engineer, P.E.	\$200.00
Senior Project Manager	\$190.00
Sr. Structural Engineer, P.E.	\$200.00
Civil/Structural Engineer, P.E.	\$160.00
Graduate Engineer, E.I.	\$115.00
Civil/Structural/REVIT Technician III	\$115.00
Civil/Structural Technician II	\$105.00
Civil/Structural Technician I	\$ 95.00
Landscape Architect	\$185.00
Administrative	\$ 90.00
Resident Inspector (Construction Services)	\$ 75.00

The above hourly rates include all direct costs, overhead, profit, and other costs related to work performance.

All depositions and/or legal proceedings will be invoiced at 1.25 standard rates with a minimum charge of \$500.00.

Reimbursable Expenses

For costs associated with copying, binding, plan reproduction, photography, and other specialty material that is directly and specifically tied to the project scope, Kyle Associates will invoice OWNER at the direct cost for such expenses plus 10%.

Mileage directly attributed to performance of the project scope will be invoiced at \$0.50 per mile. (This **does not** include travel from Engineer's office to Owner's office or project site)

Article and elsewherein 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”) and to the LA Department of Transportation and Development (the “DOTD”) 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 Landscape Architect and Electrical 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/DOTD for coordination.

The Consultant shall, in a timely manner, contact the City 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/DOTD with all services required for preparation of final plans, specifications, and bid documents as needed. These services include, but are not limited to, computations used to develop design 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 documents along with a revised construction cost estimate of the project to the Department/DOTD.

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/DOTD will review and approve such documents only for general conformance to the Scope of Project. It is understood that the preparation of final plans, specifications, 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 limited to five (5) phases of work identified in general as follows and more fully described below:

PHASE IV(a).	Final Design
PHASE IV(b).	Bid & Award
PHASE V(a) & (b).	Construction Engineering & Inspection

PHASE IV(a). FINAL DESIGN

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

1. The Consultant shall prepare and submit a revised set of plans to address the previously provided DOTD "Verification Plans" review comments, in addition to preparing and submitting all other required documentation and information as detailed in the DOTD "Transmittal of Verification Plans Comments" dated

September 18, 2019. At a minimum, the revised plan set shall include a revised summary of estimated quantities plan, detailed lighting plans with electrical notes & details, detailed landscaping plans with landscaping notes, detailed irrigation plans with irrigation notes, other miscellaneous details, and detailed traffic control plans or LADOTD traffic control special details shall be submitted at this time (if applicable). If required, the Consultant shall also coordinate with the Department and DOTD to schedule and conduct a Plan-in-Hand inspection.

2. After the plan-in-hand inspection (if required), the Consultant shall make such changes as necessary to reflect agreements reached at this stage and when authorized in writing by DOTD, prepare final plans. The Consultant shall then submit three (3) sets of revised full size 22-inches by 34-inches hard copies and electronic files to DOTD. 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 DOTD for review. 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 DOTD'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 DOTD for bids. Final plans and bid documents shall be in electronic format compatible with DOTD'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 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 City/DOTD 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/DOTD 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/DOTD 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) & V(b). CONSTRUCTION ENGINEERING & INSPECTION

Construction Engineering & Inspection Services shall consist of all services required to provide construction contract administration and construction inspection services typically performed by the DOTD Project Engineer and his staff, including but not limited to, for the new landscaping and lighting for Girod Street from Montgomery Street to U.S. Highway 190 in the City of Mandeville. Construction plans will provide the exact construction scope and limits. These services shall be performed in accordance with the DOTD’s Standards and Procedures. Copies of these documents shall be made available through the DOTD upon request. The DOTD shall assign a project engineer from its District 62 office to serve as the construction coordinator for the DOTD during project construction. The following services to be performed shall be under the direct supervision of the Consultant:

1. Coordinate with City and DOTD’s District personnel to schedule and attend the Pre-Construction Meeting. The Consultant shall be required to conduct the meeting.
2. Maintain all construction field records; make daily entries in the project diary (DWR) to indicate the Consultant’s personnel and Contractor’s personnel present on the job site, the Contractor’s personnel and equipment being utilized on the project, the work being accepted, the acceptability of traffic control, and the charging of contract time.
3. Coordinate with the City’s Engineer/Representative for all relocations/adjustments of utility facilities for the construction of work site.
4. Provide all necessary personnel and equipment to perform the required field-testing for quality assurance in accordance with the latest DOTD’s Sampling and Testing Manual.

5. Submit all sampled materials to be tested by DOTD's District 62 Testing Laboratory, in accordance with the stipulated Sampling Manual.
6. Inspect the contractor's construction operations (daily) to ensure that all work is performed in accordance with the specified plans and specifications.
7. Keep clear and concise records of the contractual operations, prepare monthly pay estimates, and make monthly progress reports in conformance with DOTD's requirements. Inspection of construction shall not include shop and mill inspections and their approval.
8. Prepare final estimate packages, including Form 2059 – "Summary of Test Results" in conformance with DOTD's requirements.
9. The Consultant shall be responsible for submittal approvals required of the Project Engineer as stated in the Standard Specifications including form drawings.
10. All construction activities shall be coordinated between the Consultant, the City, and an assigned representative of the DOTD. All work standards, methods of reporting, and documentation of pay quantities shall be in accordance with the policies and procedures of the DOTD. All partial and final construction estimates, and other information must be submitted on forms approved by the DOTD.
11. The Consultant shall perform all documentation, as prescribed by the DOTD, on the DOTD's construction software, Site-Manager. The Consultant shall provide hardware, i.e., computers, printers, internet connections, etc. deemed necessary to efficiently conduct the inspection services.
12. The Consultant may be required to conduct non-reimbursable training sessions for his personnel to receive instructions into the use of Site-Manager (approximately four hours). The DOTD shall provide a qualified instructor for this training.
13. The Consultant shall be available for conferences, visits to jobsites, and/or inspections by DOTD authorized representatives.
14. The Consultant shall be required to submit "As-Built" plans with the final estimate. "As-Built" plans are to reflect all changes made from the original plans. All changes to the plans are to be made using a 746-1/2 Tuscan red pencil.
15. "As-Built" drawings of the project must be on 3 mil (0.003") ebony line polyester film or as directed and approved by the City's Department of Engineering, in writing.
16. "As-Built" plans must use AUTOCAD.DWG format (on CD-R) compatible with AUTOCAD Release 14 or compatible with the City's system in place.
17. Three sets of "As- Built" drawings of the project on bond paper are required or must be as directed and approved by the City's Department of Engineering, in writing.
18. When it is stipulated by the Project Specifications, that approval by the DOTD is required for material, equipment, and/or construction procedures, DOTD's policies for obtaining such approval shall be followed.
19. All construction inspection personnel utilized by the Consultant must meet and retain the same qualification and certification requirements as required of DOTD's construction personnel.
21. Any proposed changes in plans or in the nature of the work shall be pre-approved in writing by the DOTD, prior to the performance of stipulated work.
22. Plan changes throughout the life of the project shall also have to be written by the Consultant and approved through the DOTD's process.
23. The Consultant shall monitor and document all construction claims and provide recommendations on disposition of claims.
24. The Consultant shall manage the RFI (Request for Information) process as defined on the

- DOTD's internet site, <http://www.dotd.la.gov/construction/rfi/>.
25. The Consultant shall coordinate and/or perform the inspection of the fabrication of pre-cast materials with DOTD and the City.
 26. The Consultant's inspector shall be responsible for performing and documenting inspections of erosion control devices and reporting deficiencies to the Contractor for correction.
 27. The Consultant shall meet with the DOTD Statewide Sign Inspector to review the construction signing for compliance with the MUTCD and Traffic Control Standards. Documentation of corrections made by the Contractor shall be input into Site Manager by the Consultant's Project Manager.
 28. The Consultant is reminded that they are a representative of the City and that they shall Conduct all business in the best interest of the City.

The services to be performed will be under the direct supervision of the City. The Consultant shall assign a full-time employee to serve as the construction coordinator for the City during project construction. The services shall be performed in accordance with the latest applicable DOTD's Construction Manual, Testing Procedures Manual, Sampling Manual, Engineering Directives and Standards Manual (EDSM) and the latest version of the Louisiana's Standard Specifications for Road and Bridges.

FHWA FORM 1391

The Consultant shall be required to notify the Construction Contractor and forward to the DOTD's Compliance Section and to the DOTD's Project Engineer all information required for the Federal-Aid Highway Construction Contractor's Annual Equal Employment Opportunity Report (FHWA Form 1391).

QUALITY CONTROL/QUALITY ASSURANCE

The DOTD requires the Consultant to develop a Quality Control/Quality Assurance program, in order to provide a mechanism by which all contracted services can be subject to a systematic and consistent review. The Consultant must ensure quality and adhere to established construction policies, procedures, standards, and guidelines in the performance of inspection services. The DOTD shall provide limited input and technical assistance to the Consultant.

SERVICES TO BE PERFORMED BY THE DOTD

The DOTD shall furnish, without charge, the following services and data:

1. Laboratory testing of materials. DOTD District 62 Testing Laboratory shall perform laboratory test in conjunction with specialty testing performed at the DOTD Central Laboratory in Baton Rouge, Louisiana, using samples procured, and submitted by the Consultant and/or his staff.
2. The DOTD shall provide access to project plans and contract proposal.
3. The DOTD shall provide sampling plan for the project.
4. Site Manager Instructor and technical support.

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 shall submit a proposed progress schedule to the City within 14 calendar days of receiving written authorization to proceed with the Final Design Phase from the City. At a minimum the proposed project schedule must include information and be arranged so that the actual progress can be shown as work is completed. Project schedule shall be coordinated with DOTD. 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 City 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, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications. The Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement. 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 IV(a) FINAL DESIGN:** The services to be performed during the Final Design Phase shall be completed within **SIXTY (60)** calendar days from the date of issuance of the Notice to Proceed for this phase.

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

F. **DELAYS:** The City may assess the Consultant \$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 IV(a).	Final Design	\$20,000.00 (Lump Sum)
PHASE IV(b).	Bid & Award	\$2,500.00 (Lump Sum)

PHASE V(a).	Construction Engineering	\$20,000.00 (Hourly, NTE) ⁽¹⁾
PHASE V(b).	Inspection	\$45,000.00 (Hourly, NTE) ⁽¹⁾
DIRECT EXPENSES		\$500.00 (NTE) ⁽¹⁾

⁽¹⁾ For Reimbursable Direct Expenses charges and for Hourly rates associated with Phase V(a) & (b) and Phase V(c) refer to Exhibit A – Kyle & Associates, LLC Hourly Rate Schedule for Professional Services (Effective January 1, 2024) as included herein.

B. MAXIMUM AMOUNT: The maximum aggregate amount payable by the City for all services performed under this Agreement is \$88,000.00. This amount is exclusive 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 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 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 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 _____, 2024.

FORM AND LEGALITY APPROVED:
Law Department
By: _____
Printed Name: _____

KYLE ASSOCIATES, LLC
BY: _____
FRANKLIN M. KYLE, III, PRESIDENT

CORPORATE TAX I.D.

Exhibit A

Kyle & Associates, LLC Hourly Rate Schedule for Professional Services
(Effective January 1, 2024)



HOURLY RATE SCHEDULE
 for
 PROFESSIONAL SERVICES
 Effective January 1, 2024

=====

Principal	\$225.00
Senior Registered Engineer, P.E.	\$200.00
Senior Project Manager	\$190.00
Sr. Structural Engineer, P.E.	\$200.00
Civil/Structural Engineer, P.E.	\$160.00
Graduate Engineer, E.I.	\$115.00
Civil/Structural/REVIT Technician III	\$115.00
Civil/Structural Technician II	\$105.00
Civil/Structural Technician I	\$ 95.00
Landscape Architect	\$185.00
Administrative	\$ 90.00
Resident Inspector (Construction Services)	\$ 75.00

The above hourly rates include all direct costs, overhead, profit, and other costs related to work performance.

All depositions and/or legal proceedings will be invoiced at 1.25 standard rates with a minimum charge of \$500.00.

Reimbursable Expenses

For costs associated with copying, binding, plan reproduction, photography, and other specialty material that is directly and specifically tied to the project scope, Kyle Associates will invoice OWNER at the direct cost for such expenses plus 10%.

Mileage directly attributed to performance of the project scope will be invoiced at \$0.50 per mile. (This **does not** include travel from Engineer's office to Owner's office or project site)