

# ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT made and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2020 by and between ST. CHARLES PARISH acting herein by and through its President, who is duly authorized to act on behalf of said Parish, hereinafter called the OWNER, and Kyle Associates, LLC, a corporation acting herein by and through its Contracting Officer, hereinafter called ENGINEER. Whereas the Owner desires to employ a professional consulting engineering firm to perform engineering services for the East Bank Sewer Master Plan (Destrehan Plant System) project as described in Ordinance No. \_\_\_\_\_ which is attached hereto and made a part hereof.

## 1.0 GENERAL TERMS

The Owner agrees to employ the Engineer and the Engineer agrees to perform professional services required for the project described above. Engineering will conform to the requirements of the Owner and to the standards of the agencies participating with the Owner in the Project. The Engineer will coordinate all work between the Owner and all participating agencies and regulating agencies, if needed. Written authorization to begin different phases of the project will be given to the Engineer by the Owner. The Owner may terminate the Contract by written notification and without cause per Section 10.0 during any phase of the project.

The Engineer shall at all times during this Agreement maintain a valid Louisiana Engineering License and any other applicable licenses necessary for performance of the Project.

All work shall be under the direction of the Owner, and all plans, specifications, etc. shall be submitted to the Owner and all approvals and administration of this contract shall be through the Owner.

## 2.0 PROJECT

2.1 The Owner hereby contracts with the ENGINEER to perform all necessary professional services in connection with the Project as specified in the attached proposal from Kyle Associates, LLC and all other requirements in this Agreement.

2.2 In general, the Project consists of developing a Sewer Master Plan by developing and modeling the flow to the Destrehan Plant. This effort will be accomplished in the following Phases:

Phase I – Planning/Data Gathering/Preliminary Evaluation

Phase II – Infiltration & Inflow (I&I) Analysis and Hydraulic Model

Phase III – Capital Improvement Program

Phase IV – Master Plan (Report)

- 2.3 The Engineer agrees to comply with all Federal, State, and Local Laws and Ordinances applicable to the scope of services and work or in entering any other agreement with any another party to complete the work.

### **3.0 SERVICES OF ENGINEER**

- 3.1 Engineer shall provide Owner professional engineering services in all phases of the Project to which this Agreement applies and as hereinafter provided to properly plan and execute the work on the project(s) assigned to the Engineer. These services may include but may not be limited to serving as Owner's professional engineering representative for the Project, providing professional engineering consultation and advice, and furnishing customary civil, surveying, geotechnical, structural, mechanical, electrical, instrumentation and control engineering services and construction engineering and inspection.
- 3.2 Services provided by the Engineer shall be performed in accordance with generally accepted professional engineering practice at the time and the place where the services are rendered.
- 3.3 Engineer shall obtain from Owner authorization to proceed in writing for each phase of the Project.
- 3.4 Engineer shall provide minutes of all meetings with St. Charles Parish regarding any phase of the Project.
- 3.5 Engineer shall provide basic services to complete the project, including all necessary services described herein or usually implied as a prerequisite for the performance of the services whether or not specifically mentioned in this agreement, including attendance by the Engineer at project conferences and public hearings.
- 3.6 Planning Phase
- 3.6.1 Conducting a Planning Meeting Workshop with the Owner.
- 3.6.2 Advising the Owner as to the necessity of providing or obtaining from others additional data or services. These additional services may include photogrammetry, reconnaissance surveys, property surveys, topographical surveys, geotechnical investigations and consultations, compilation of hydrological data, materials engineering, and environmental assessments and impact statements.
- 3.6.3 Identifying and analyzing requirements of governmental authorities having jurisdiction to approve the design of the Project, and participating in consultations with such authorities.
- 3.6.4 Preparing a comprehensive Planning Report presenting multiple solutions to the Owner with the Engineer's findings and recommendations. The Report will contain as a minimum:
- a. Discussion of project background and need.
  - b. Schematic layouts, sketches, or photographs.
  - c. Conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved.

- d. Any special material specifications including major equipment specifications.
  - e. A preliminary cost estimate for each alternative.
  - f. Engineer's conceptual opinion of probable costs for the selected alternative.
  - g. Discussion as to what permits are needed, time to acquire approvals, and potential adjacent landowner authorizations/servitudes that need addressing.
  - h. Discussion of the type of additional services that will be needed.
- 3.6.5 Meeting with the Owner and presenting findings of the Planning Report.
- 3.6.6 The Planning Report and Engineer's documentation and opinion of costs, along with the following documents and files, shall be delivered to Owner within 30 calendar days, or as otherwise stated in the written authorization from Owner to Engineer to proceed with Planning Services.
- a. Two (2) copies of the report for review.
  - b. Once the report has been finalized, submit two (2) copies of the revised report plus one (1) electronic file copy in PDF format.

#### **4.0 OWNERSHIP OF DOCUMENTS**

- 4.1 Documents including but not limited to plans, specifications, maps, basic survey notes, sketches, charts, computations and all other data prepared or obtained under the terms of this authorization shall become the property of the Owner and shall be made available for Owner's inspection at any time during the Project and, shall be delivered to the Owner prior to termination or final completion of the Contract.
- 4.2 Engineer may retain a set of documents for its files.
- 4.3 Reuse of Documents. Any reuse of documents or materials without written authorization or adaptation by Engineer to the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's independent professional associates, subcontractors, and consultants.
- 4.4 No materials, to include but not limited to reports, maps or other documents produced as a result of this Contract, in whole or in part, shall be available to Engineer for copyright purposes. Any such materials produced as a result of this Contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner, and the Owner shall be sole and exclusive entity who may exercise such rights.

#### **5.0 SUPPLEMENTARY SERVICES**

The Engineer shall provide, when requested in writing by the Owner, supplementary services not included in the basic services.

The compensation to the Engineer for the supplemental services, when performed by the Engineer, shall be in the form of a lump sum, billable hours, or "not to exceed" hourly rate which is mutually agreeable to the Owner and the Engineer in writing.

Such supplementary services may include the following:

- A. Soil investigations
- B. Laboratory inspection of materials and equipment
- C. Right-of-Way, easement and property acquisition surveys, plats, maps and documents
- D. Any major revisions for which the Engineer is not responsible, that are authorized by the Owner after the completion and approval of either the preliminary or final plans and specifications
- E. Services concerning replacement of any work damaged by fire or other causes during construction
- F. Services made necessary by the default of the contractor in the performance of the construction contract
- G. Services as an expert witness in connection with court proceedings
- H. Traffic Engineering if necessary
- I. Topographic Survey
- J. Preparation of Environmental Assessment documents and/or Environmental Permits
- K. If all or part of the work is to be financed by a Federal or State Grant, the Engineer shall assist the Owner in the preparation of the Grant application and with the Grant Administration, unless otherwise specifically agreed upon previously herein.

## **6.0 DEFECTIVE WORK**

During such visits and on the basis of such observations, Engineer may disapprove of or reject Contractor's work while it is in progress if Engineer believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

## **7.0 NOTICE TO PROCEED**

The Owner shall notify the Engineer in writing to undertake the services stated in this Agreement, and the Engineer shall commence the services within ten (10) days after receipt of such notification. The work necessary for the completion of each individual project/work task shall be completed within a time period agreed upon (in writing) between the Owner and the Engineer, following the notice to proceed.

If the Owner desires to divide the Project into various parts, a Notice to Proceed shall be issued for each part, and the Owner and the Engineer shall mutually agree upon the period of time within which services for each part of the Project shall be performed.

The Engineer will be given time extensions for delays beyond their control or for those caused by tardy approvals of work in progress by various official agencies, but no additional compensation shall be allowed for such delays.

## 8.0 PAYMENTS

8.1 For performance of Basic Engineering, the Owner shall authorize and pay the Engineer a not-to-exceed fee, based on the hourly rates in the Proposal and actual time worked and charges incurred. For the various phases the Engineer shall be paid as follows:

Phase I – Planning/Data Gathering/Preliminary Evaluation	\$115,710.00
Phase II – Infiltration & Inflow (I&I) Analysis and Hydraulic Model	TBD*
Phase III – Capital Improvement Program	TBD
Phase IV – Master Plan (Report)	TBD

\* To be determined at the time of the Notice to Proceed.

8.2 Payment for basic engineering services on projects that do not require construction services, such as feasibility studies or drainage studies, shall be made based upon Engineer's estimate of the proportion of the services actually completed at the time of billing and shall be made in partial payments at monthly intervals.

8.3 If the Project, or any portion thereof, is not completed for any reason, the final fee for basic engineering services shall be negotiated between Owner and Engineer.

8.4 If authorized in writing by Owner, for the performance of, or for obtaining from others Additional Services which are not considered normal or customary Basic Engineering, the Owner shall pay Engineer based on monthly invoices submitted by the Engineer, within sixty (60) days of receipt of Engineer's invoice.

8.5 For Additional Authorized Services provided by the Engineer such as, but not limited to, wetlands permitting, land and right-of-way acquisition, surveying, NPDES and LADEQ permit renewal or acquisition work, etc. Owner shall pay Engineer based on an agreed upon hourly rate(s) between the Owner and Engineer. Payment shall be not-to-exceed based on hourly rates and actual hours worked.

8.6 The following documentation shall be required for payment to Engineer and shall be attached to the monthly invoice.

- a. A copy of the Owner's written authorization to perform the service.
- b. Timesheets for all hours invoiced.
- c. Invoice copies, logs or other substantiation of non-salary expenses.

8.7 For Additional Authorized Services that Engineer acquires from subcontractors and/or subconsultants, Owner shall pay Engineer a fixed sum previously agreed upon by Owner and Engineer, such sum to be established in each case when the scope of the work involved has been determined and before any of the Additional Services are provided. The use of subcontractors and/or subconsultants shall be subject to the provisions set forth in this Agreement. The following documentation shall be required for payment to Engineer and shall be attached to the monthly invoice:

- a. A copy of the Owner's written consent for the subcontractor and/or subconsultant to perform the service stating the Owner's and Engineer's agreed upon fixed sum established for the service performed.
- b. Evidence that the subcontractor and/or subconsultant is insured as required by this Agreement.

8.8 For *Additional Engineering* described in Section 6, Owner shall pay Engineer for the fee negotiated at the time the work is assigned by the method stipulated in the contract amendment.

## **9.0 FUNDS**

No work shall be authorized until funds are established for each individual task.

## **10.0 TERMINATION OR SUSPENSION**

- 10.1 This Agreement may be terminated for any reason by either party upon thirty (30) days written notice.
- 10.2 The Engineer, upon receipt of such notice, shall immediately discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 10.3 The Engineer shall, as soon as practicable after receipt of notice of termination, submit a statement showing in detail the services performed and payments received under this Agreement to the date of termination.
- 10.4 The Owner shall then pay the Engineer promptly that portion of the prescribed fee to which both parties agree.
- 10.5 Engineer fully acknowledges that no payment will be made for any work performed or expenses incurred after receipt of the termination by either party unless mutually agreed upon in writing.
- 10.6 Failure to meet agreed delivery dates or authorized extensions are considered substantial failures and breach of this contractual agreement by Engineer.

## **11.0 INSURANCE**

- 11.1 The Engineer shall secure and maintain at his expense such insurance that will protect him and the Owner, from claims under Workmen's Compensation Acts and from claims for bodily injury, death or property damage which may arise from performance of services under this Agreement. Insurance for bodily injury or death shall be in the unencumbered amount of \$1,000,000.00 for one person and not less than \$1,000,000.00 for all injuries and/or deaths resulting from any one occurrence. The insurance for property damage shall be in the unencumbered amount of \$1,000,000.00 for each accident and not less than \$1,000,000.00 aggregate.
- 11.2 The Engineer shall also secure and maintain at his expense professional liability insurance in the unencumbered sum of \$1,000,000.00.

- 11.3 All certificates of insurance SHALL BE FURNISHED TO THE OWNER and shall provide that insurance shall not be cancelled without ten (10) days prior written notice to the Owner. The Owner may examine the policies.
- 11.4 Engineer shall include all subcontractors and/or subconsultants as insured under its policies or shall furnish separate certificates for each. All coverages for subcontractors and/or subconsultants shall be subject to all the requirements stated herein.
- 11.5 St Charles Parish shall be named as an additional insured on general liability insurance policies.
- 11.6 For all purposes under Louisiana law, the principals of this Contract shall be recognized as the statutory employer of all contract employees as provided in LSA-R.S. 23:1061.

## **12.0 INDEMNIFICATION**

Engineer shall indemnify and hold harmless the Owner, its employees, agents and representatives, against any and all claims, demands, suits or judgments for sums of money to any party for loss of life or injury or damages to person or property growing out of, resulting from or by any reason of any negligent act by the Engineer, its employees, agents, servants or representatives, while engaged upon or in connection with the services required or performed hereunder.

## **13.0 WARRANTY**

- 13.1 Engineer warrants that it will perform its design services with the degree of skill and to the standard of care required of the engineering profession to meet all Federal, State and Local requirements.
- 13.2 If Engineering Services for project designed by Engineer does not meet those requirements noted herein above, then to the extent that this occurs as a direct result of Engineer's failure to meet the standard of care in its design services, Engineer will indemnify the Parish for Engineer's share of the costs incurred to bring Engineering Services for project to the limitations mandated.
- 13.3 The obligations expressed in Section 13 above in no way limit the Engineer's obligations expressed elsewhere in this Contract.

## **14.0 EXCLUSIVE JURISDICTION AND VENUE**

For all claims arising out of or related to this agreement, ENGINEER hereby consents and yields to the exclusive jurisdiction and venue of the Twenty-Ninth Judicial District Court for the Parish of St. Charles, State of Louisiana, and expressly waives any (a) pleas of jurisdiction based upon Engineer's residence and (b) right of removal to Federal Court based upon diversity of citizenship.

**15.0 OTHER**

This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified withing this Agreement. This Agreement may not be modified, supplemented or amended in any manner, except by written agreement signed by both parties.

IN WITNESS WHEREOF, the parties to these presents have hereunto caused these presents to be executed the day, month and year first above mentioned.

WITNESSES:

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

ST. CHARLES PARISH

\_\_\_\_\_  
By: Matthew Jewell  
Parish President

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

WITNESSES:

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\_\_\_\_\_

ENGINEER

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

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