



PROFESSIONAL SERVICES AGREEMENT

(version 1-14-2020)

This AGREEMENT (“Agreement”) is entered by and between **ARKK Engineers, LLC** (“Professional”), located at **7322 Southwest Freeway Suite 1040, Houston, TX 77074** and the **City of League City** (“City”), a home-rule municipality, located at 300 W. Walker St., League City, Texas 77573 on the date set forth below.

Terms:

1. **Scope of Services:** Professional will perform the services as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **the design and construction phase services associated with the rehab of the Southshore #1 and #2 Lift Stations as part of the Annual Lift Station Rehab Project**. Services related to design, bid, or construction of a public work shall conform to the requirements set forth in **Exhibit B**. If there is a conflict between the terms of this Agreement and Exhibits A or B, the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall commence on **January 30, 2020** and shall expire on **August 27, 2020**. City reserves the right to terminate this Agreement for convenience upon seven (7) days written notice to Professional. Upon such termination, City shall pay Professional, at the rate set out in **Exhibit A**, for services satisfactorily performed up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Professional for any services performed or for expenses incurred by Professional after the date of the termination notice that could have been avoided or mitigated by Professional.
3. **Compensation:** Professional shall be paid for the services as set forth in **Exhibit A**. In no event shall the total compensation exceed **\$93,400.00** during the term of this Agreement. City shall tender payment (including progress/partial payments) for services only after such services are completed and are deemed to be acceptable under this Agreement, in the sole reasonable discretion of City. Professional must submit to City invoices for all services provided, which invoices must include details and dates of service. Payment by City shall be made within thirty (30) days of receipt of an invoice, except for any portion of the invoiced amount that City disapproves as not compliant under this Agreement, in the sole reasonable discretion of City. If City disapproves any amount submitted for payment by Professional, City shall give Professional specific reasons for disapproval in writing.
4. **Insurance:** Professional **is** required during the Contract Term to maintain insurance as set forth below:
 - (a) Comprehensive General Commercial Liability insurance covering bodily injury and property damage, with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate;
 - (b) Professional Liability (errors and omissions/malpractice) insurance with minimum coverage limits—exclusive of defense costs—of \$2,000,000 per occurrence; and
 - (c) If at any point during the Contract Term it is foreseeable that Professional will enter upon City premises:
 - (i) Worker’s Compensation coverage with statutory limits for the State of Texas, and
 - (ii) Commercial Automobile Liability coverage with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate.All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Professional shall pay

all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Professional shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Liquidated Damages:** Professional acknowledges that time is of the essence in performing this Agreement. City and Professional (collectively, the “Parties”) agree that if Professional is late in performing any service designated as Time Critical on the Scope of Services attached to this Agreement, City will suffer loss, damages, or other harm from Professional’s delay. The Parties agree that the amount of loss, damages, or harm likely to be incurred as a result of Professional’s delay is incapable or difficult to precisely estimate, and therefore the Parties desire to stipulate the amount of such loss, damages, or harm. Accordingly, Professional shall have deducted from any amounts owed under this Agreement liquidated damages equal to the number of calendar days of the delay(s) times the daily rate, which rate shall be one-tenth of one percent (0.1%) times the compensation shown in the Scope of Services for such Time Critical service. The Parties further agree that: (i) the liquidated damages specified herein are not a penalty but rather bear a reasonable relationship to, and is not plainly or grossly disproportionate to, the probable loss likely to be incurred by City as a result of Professional’s delay; (ii) one of the reasons for City and Professional to agree to such amounts is the uncertainty and cost of litigation regarding the question of actual damages; and (iii) City and Professional are sophisticated business parties and negotiated this Agreement at arm’s length.
6. **Independent Professional:** Professional is an independent Professional and is not an employee, partner, joint venture, or agent of City. Professional understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Professional shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by City for such expenses except as otherwise provided in this Agreement.
7. **Intellectual Property:** This Agreement shall be an Agreement for services and the parties intend and consider any work created as a result of this Agreement, including any and all documentation, images, products or results, to be a work (the “Work”) for hire under federal copyright law. Ownership of the Work shall belong to and remain the exclusive property of City. The Work may be edited at any time within City’s discretion. If the Work would not be considered a work-for-hire under applicable law, Professional hereby assigns, transfers, and conveys any and all rights, title and interest to City, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the Work, City maintains and asserts the rights to use, reproduce, make derivative works from, and/or edit the Work in any form of medium, expression or technology now known or hereafter developed, at any time within City’s discretion. Professional shall not sell, disclose or obtain any other compensation for the services provided herein or the Work. If the Work is one to which the provisions of 17 U.S.C. § 106A apply, Professional hereby waives and appoints City to assert on Professional's behalf Professional's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the work, in any medium, for City’s purposes.
8. **Confidentiality:** During the course of the services to be provided under this Agreement, Professional may become privy to confidential information of City. Professional agrees to treat as confidential the information or knowledge that becomes known to Professional during performance of this Agreement and to not use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Professional shall promptly notify City of any misuse or unauthorized disclosure of City’s confidential information and upon expiration of this Agreement shall return to City all confidential information in Professional’s possession or control. Professional shall further comply with all information security policies of City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Professional without the prior written approval of City.

9. **Warranties and Representations:** Professional warrants and agrees that Professional shall perform its services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any service performed on premises owned or controlled by City, Professional warrants and agrees that Professional will perform said services in compliance with all City rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
10. **Licenses/Certifications:** Professional represents and warrants that it will obtain and maintain in effect, and pay the cost of, all licenses, permits or certifications that may be necessary for Professional's performance of this Agreement. If Professional is a business entity, Professional warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Professional.
11. **Performance/Qualifications:** Professional agrees and represents that Professional has the personnel, experience, and knowledge necessary to qualify Professional for the particular duties to be performed under this Agreement. Professional warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.
12. **Conflict of Interest:** Professional warrants, represents, and agrees that Professional presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Professional's performance of the services hereunder. Professional further warrants and affirms that no relationship or affiliation exists between Professional and City that could be construed as a conflict of interest with regard to this Agreement.
13. **INDEMNIFICATION: PROFESSIONAL SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY , AND EACH OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF PROFESSIONAL OR ANY AGENT, EMPLOYEE, SUBPROFESSIONAL, OR SUPPLIER OF PROFESSIONAL IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT OR VIOLATION OF LAW.**
14. **Force Majeure:** Neither party shall be liable to the other for (i) any delay in performance; (ii) any other breach; (iii) any loss or damage; or (iv) any contribution to or aggravation of any of the foregoing; arising solely from uncontrollable forces such as fire, theft, storm, war, or any other cause that could not have been reasonably avoided by the party's exercise of due diligence.
15. **Notices:** Any notice given under this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the Parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.

16. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006 of the Texas Family Code, Professional certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
17. **State Auditor:** Professional understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, the "Auditor"), to conduct an audit or investigation in connection with those funds. Professional agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Professional will include this provision in all contracts with permitted subprofessionals.
18. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
19. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by City and Professional to attempt to resolve any claim for breach of contract made by Professional that cannot be resolved in the ordinary course of business. The Director of Finance of City shall examine Professional's claim and any counterclaim and negotiate with Professional in an effort to resolve such claims. This provision shall not be construed as a waiver by City of its right to seek redress in the courts.
20. **Entire Agreement:** This Agreement contains the entire understanding between the Parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the Parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the Parties executed subsequent to this Agreement.
21. **Eligibility to Receive Payment:** Professional certifies that, as a matter of state law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
22. **Payment of Debt/Delinquency to State:** Professional certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Professional agrees that any payments owing to Professional under the Agreement may be applied directly toward any debt or delinquency that Professional owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
23. **Products and Materials Produced in Texas:** If Professional will provide services under the Agreement, Professional covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
24. **Risk of Loss:** If applicable, all work performed by Professional pursuant to the Agreement will be at Professional's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, bearing such loss or damage will be Professional's responsibility.
25. **Publicity:** Professional shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
26. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as

if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Agreement are declared to be severable. The Parties may mutually agree to renegotiate the Agreement to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.

27. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Any terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.
28. **Sovereign Immunity:** The Parties agree that neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement constitutes a waiver of sovereign immunity by City.
29. **Authority:** Professional warrants and represents that Professional has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of City represents that he/she has authority to sign this Agreement on behalf of City.
30. **Non-Waiver:** The Parties specifically agree that neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Professional. No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.
31. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002 of the Texas Government Code, by executing this Agreement Professional verifies that Professional: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
32. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Professional warrants, covenants, and represents that Professional is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152 of the Texas Government Code.

(signature block on next page)

Executed on this _____ day of _____, _____. *(date to be filled in by City Secretary)*

ARKK ENGINEERS, LLS - "Professional"



Madhu Kilambi, PE

CITY OF LEAGUE CITY – "City"

John Baumgartner, City Manager

Attest:

Diana Stapp, City Secretary

Approved as to Form:

Office of the City Attorney

Exhibit A

Scope of Services/Description of Products/Payment Schedule
(9 number of pages, including this page)

See Next 8 Pages...

EXHIBIT "A"

GENERAL OVERVIEW & SCOPE OF SERVICES

General Overview

This proposal is based on our understanding of the project as discussed in our previous meetings and conversations. This proposal consists of providing engineering design and construction phase services associated with the rehabilitation of the South Shore Lift Station No. 1 and the South Shore Lift Station No. 2. The allocated construction budget is \$750,000.

The existing two lift stations are dry pit type, and are to be converted to submersible type, for the purpose of improving reliability and safety. These lift stations are also in need of rehabilitation due to their overall moderately deteriorated condition.

The scope of the improvements for each lift station is as follows:

South Shore Lift Station 1:

- Convert the lift station from a dry pit type to a submersible type.
- Replace the control panel and install new level transducers. Use City-preferred lift station controller.
- Replace the two (2) existing 25 HP Gorman Rupp T-6 suction lift pumps with new submersible pumps, mounted on stainless steel rail system
- Cut hatch openings into the existing wet well roof structure. Roof structure may require structural improvements in order to accommodate the hatch openings.
- Replace the lift station discharge piping and valves with above-ground piping and valves; connect to existing force main.
- Install a corrosion-resistant wall liner to the wet well walls & ceiling
- Replace the chain link fence and possibly the existing masonry fence columns
- Replace the gate with a rolling gate or swing gate at the City's preference
- Replace the vent
- Add a safety net to the wet well hatch
- Add a downward facing area light
- Demolish the existing dry well pit

South Shore Lift Station 2:

- Convert the lift station from a dry pit type to a submersible type.
- Replace the control panel and install new level transducers. Use City-preferred lift station controller.
- Replace the two (2) existing 15 HP Gorman Rupp T-8 suction lift pumps with new submersible pumps, mounted on stainless steel rail system

- Cut hatch openings into the existing wet well roof structure. Roof structure may require structural improvements in order to accommodate the hatch openings.
- Replace the lift station discharge piping and valves with above-ground piping and valves; connect to existing force main.
- Install a corrosion-resistant wall liner to the wet well walls & ceiling
- Replace the chain link fence and possibly the existing masonry fence columns
- Replace the gate with a rolling gate or swing gate at the City's preference
- Replace the vent
- Add a safety net to the wet well hatch
- Add a downward facing area light
- Demolish the existing dry well pit

ARKK will prepare engineering design plans and specifications reflecting the above scope of work, and will perform construction administration services to support the project. The engineering design will include civil, mechanical, and electrical design services.

During construction, the City of League City will provide a project site representative to observe the progress of construction. Therefore, construction inspection services by ARKK Engineers' personnel are not part of the scope of this project. Construction materials testing services are also not included, as we understand that the City will contract directly with a material testing firm during construction if any quality control testing of the concrete or wall liner material is desired.

This proposal addresses the engineering services ARKK Engineers will provide the City during the design and construction phases, including such services as plan reproduction, and miscellaneous services that may be required for the project.

SCOPE OF SERVICES

I. BASIC SERVICES

1. Design Services (time critical services)

- Obtain available record drawings from the City.
- Visit each site and take measurements of the lift station components as needed to prepare the design.
- Meet with City staff and prepare 30% design plans for City review.

- Prepare and submit to the City 60% complete bid document package comprised of plan drawings and specifications.
- Incorporate comments from the City into the bid documents.
- Prepare and submit to City 90% bid document package comprised of plan drawings and specifications.
- Incorporate comments from the City into the final bid documents.
- Finalize bid document packages comprised of plan drawings and specifications for the lift station rehabilitation.
- Prepare an engineering cost estimate for the project at the 30%, 60%, 90%, and 100% completion stages.
- Furnish two (2) sets of plans and specifications to the City.

2. Bid Phase Services

- Assist the City in obtaining bids for the project. The City of League City will advertise the project and will absorb all related advertising costs. ARKK will coordinate with the City and will assist in developing the wording of the advertisement.
- Dispense construction documents via the Civcast online plan room (by Amtek USA) to prospective bidders.
- Conduct a pre-bid conference for potential bidders. Prepare meeting agenda and minutes summary.
- During the bidding phase for the project, provide information to, and answer questions from prospective bidders regarding the project.
- Prepare addendums to the contract as necessary for the project.
- Attend bid opening for the project.
- Prepare bid tabulation for the project. Check the bids for mathematical errors and/or bid irregularities.
- Evaluate the bid results and the qualifications of the apparent low bidder, and advise the City as to the acceptability of the apparent low bidder for the project.

- Prepare an engineering letter of recommendation for City Council award of a construction contract for the project.

3. Construction Administration Services

- Conduct a pre-construction conference for the project.
- Act as the City's Project representative during the construction phase.
- Review and respond accordingly to all submittals as required by the specifications.
- Prepare change orders as necessitated by field conditions.
- Review contractor's pay estimates and make payment recommendations to the City based on input from City of League City's site representative.
- Visit the site at intervals appropriate to the various stages of construction to observe the progress and quality of executed work and to determine in general if such work is proceeding in accordance with the Contract Documents. The City will be providing a site representative to observe the progress of work during construction.
- ARKK will not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor(s) or the safety precautions and programs incident to the work of the Contractor(s). ARKK's effort will be directed toward providing a greater degree of confidence for the City that the completed work of Contractor(s) will conform to the Contract Documents, but ARKK will not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During site visits and on the basis of on-site observations ARKK shall keep the City informed of the progress of the work, shall endeavor to guard the City against defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents.
- Conduct a Substantial Completion walkthrough with City Staff and Contractor and prepare a punch list.
- Conduct a final inspection of the Project and make a recommendation for Final Payment on the project.
- Engineer shall provide one set of reproducible Record Drawings based on the red-line marked up as-built drawings provided by the Contractor.

II. SPECIAL SERVICES

1. Reproduction

- Costs for reproduction of plans and specifications will be invoiced under this item.
- Reproduction for review sets, submittals to the City, governmental agencies, and utility companies will be included in the cost for reproduction.

2. Miscellaneous Services

- Due to the nature of the work, it is recommended that a budget for miscellaneous services be allocated by the City. This item will not be utilized unless approved by the City of League City staff. This item will cover additional and unforeseen needed design services for tasks or other additional services that may be determined to be necessary during the design or the construction phase.

3. Construction Support Services:

- Provide construction support services by ARKK's staff to aid the City's project site representative during the construction phase. Meet with City staff and the contractor to resolve site-specific issues in the field as necessary.
- Provide additional engineering and technical office personnel support during construction. These office personnel, consisting of professional engineers and design staff, provide on-site support to address contractor's questions, resident's concerns and conflicts uncovered in the field.

EXHIBIT 'B' - FEE

Basic Services:

Design Services: Lump Sum amount of:	\$ 68,100.00
Bid Phase Services: Lump Sum amount of:	\$ 2,950.00
Construction Administration: Lump Sum amount of:	<u>\$ 14,100.00</u>
Sub-Total	\$ 85,150.00

Special Services:

Reproduction: Cost plus 10%:	\$ 750.00
*Miscellaneous Services: Hourly, not to exceed:	\$ 3,000.00
Construction Phase Support: Hourly, not to exceed:	<u>\$ 4,500.00</u>
Sub-Total	\$ 8,250.00

TOTAL FEE	\$ 93,400.00
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*At this time the magnitude of this task are not known. Therefore budgetary amount is provided. This figure may increase or decrease depending upon actual work required. If an increase becomes necessary it can be accomplished by utilizing available funds from other line items that have an under run, or funds from the miscellaneous services line item or by contract amendment.

RATE SCHEDULE

<u>Employee Classification</u>	<u>Billing Rate</u>
Project Principal (P.E.)	\$184.00/hour
Senior Project Manager (P.E.)	\$184.00/hour
Project Manager (P.E.)	\$155.00/hour
Senior Designer	\$145.00/hour
Project Graduate Engineer (E.I.T.)	\$115.00/hour
Senior CADD Operator	\$137.00/hour
CADD Operator	\$ 95.00/hour
Senior Construction Manager (P.E.)	\$184.00/hour
Construction Manager	\$136.00/hour
Construction Inspector	\$105.00/hour

Reimbursable expenses will be charged at cost plus 10%. Mileage will be charged at the current IRS prevailing rate.

EXHIBIT 'D'
SUBMITTAL SCHEDULE

The following is a submittal schedule estimate for each design milestone:

30% Design Meeting

- 60 days from Notice to Proceed Date.

60% Design Milestone

- 60 Days to complete from 30% design meeting

90% Design Milestone

- 60 Days to complete from the approval of 60% submittal by City

100% Design Milestone

- 30 Days to complete from the approval of 90% submittal by City