



PROFESSIONAL SERVICES AGREEMENT

(Version 9-22-2023)

This AGREEMENT (“Agreement”) is entered by and between **Ardurra Group, Inc.** (the “Professional”), located at **3115 Allen Parkway, #300, Houston, TX 77019** 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 **Dallas Salmon Wastewater Treatment Plant Ultra Violet (UV) System Replacement Project**. Services related to design, bid, or construction of a public work shall conform to the requirements set forth in **Exhibit B**, if applicable. If there is a conflict between the terms of this Agreement and Exhibits A (or B, if applicable), the terms of this Agreement will prevail.
- 2. Term and Termination:** This Agreement shall commence on **March 17, 2025** and shall expire on **February 17, 2026**. 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 **\$410,700** 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:** Liquidated damages **are** applicable to this transaction. 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, SUBCONTRACTOR, 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 affected 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:** 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, or the need to redo or revise the work for any reason except to accommodate a City request to materially alter the work, prior to City's acceptance, bearing the costs of such loss or damage to or such redo or revision of the work 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:** The Parties stipulate that in entering into this Agreement, the City is performing a solely governmental function and not a proprietary function. 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. **Prohibitions Pursuant to Texas Government Code:** By executing this Agreement Professional verifies that Profession (1) does not boycott Israel and will not during the term of this Agreement per Section 2274.002; (2) is not engaged in business with Iran, Sudan, or any company on the list referenced in Section 2252.152; (3) does not boycott energy companies and will not during the term of this Agreement per 2274.002; and (4) does not have a practice, policy, guidance, or directive of this Agreement against a firearm entity or firearm trade association and will not during the term of this Agreement per 2274.002.

(signature block on next page)

Executed on _____ . *(date to be filled in by City Secretary)*

ARDURRA GROUP, INC. - "Professional"



Jeffrey S. Peters, P.E., BCEE

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
(7 pages, including this page)

See Next Pages

SCOPE OF SERVICES FOR CITY OF LEAGUE CITY, TX DALLAS SALMON WWTP UV SYSTEM REPLACEMENT

PROJECT BACKGROUND AND INTRODUCTION

Ardurra Group, Inc. (Professional) will perform the necessary tasks to complete a Condition Assessment Report for the Dallas Salmon Wastewater Treatment Plant (WWTP) UV System Replacement Project for the City of League City, TX (City) as defined in this Scope of Services. The current UV system has been in service for more than 24 years and has exceeded its 20 year service life.

The Work generally includes performing two major tasks:

1. A Condition Assessment of the Ultraviolet Disinfection System and current plant operating data to identify sizing parameters for a replacement system. Explore reuse of the current UV Structure or whether a new structure is required. Verification of current and upcoming TCEQ permit conditions for plant effluent and plant effluent for reuse as well as current and future flood elevation considerations for implementing a new replacement system. Confirm need for potential plant flow increase from 12.0 mgd/ 36.0 mgd to 16.0 mgd/ 48.0 mgd. Confirm all current and proposed reuse flows.
2. Perform Preliminary Engineering (PER) design comparison of UV System Replacement looking at various potential options as follows:
 - A. Examining and identifying multiple current state of the art UV System manufacturers (up to 3 systems) comparing the relative features, performance, power use, maintenance requirements, and Net Present Value (NPV) and Life Cycle Cost Analysis (LCCA).
 - B. Identify and develop layouts for the primary UV system configuration option as well as a second option whether installed in a new structure versus potential reuse of the existing UV structure if possible. Develop a Maintenance of Plant Operations (MOPO) plan for both layout considerations.
 - C. Explore level control methods whether static UV finger weir troughs versus automated level control modulating slide gates as installed in the existing system.
 - D. Perform open channel hydraulics with computer hydraulic model for the UV options to compare how each system fits within the available hydraulic profile; if at all. Hydraulics are to analyze from the Outfall to Effluent Structure at the Parshall Flume and then working upstream through the new UV system up to Filter Effluent weir control point. Design a new 2nd Re-Lift Pump Station after the UV System to pump effluent to a higher grade line when flood conditions exist.
 - E. Design layout of a new UV System and Electrical Building as the existing building is not flood protected against the newer current 500 year flood plain elevation. New building will

Exhibit A / Detailed Scope of Services

consider future Atlas 14- elevation increases in the 500 year flood plain and raise building floor elevation and walls of new UV basin above this value.

- F. The project, including all anticipated improvements, has an initial City identified conceptual construction cost of approximately \$6,000,000. However, with all considerations addressed with the flood plain impacts; etc., the cost may increase upwards to \$15M. The PER report will outline the costs and the City will provide final direction after a PER Review Meeting Presentation by the Professional.

The work associated with these Professional services is separated into the following tasks:

- Task 1 – Condition Assessment
- Task 2 – Preliminary Engineering Phase Services

Future tasks that will be negotiated after completion of Task 3 include the following tasks:

- Task 3 – Final Design Phase Services
- Task 4 – Bid Phase Services
- Task 5 – Construction Phase Services
- Task 6 – Special Services
- Task 7 – Additional Services

The scope of work presented below describes the level of services for this project by task.

BASIC SERVICES

Task 1 – Condition Assessment

The Condition Assessment will include engineering analysis of the existing UV System, associated permits, and current and future flood plain regulatory requirements to verify all pertinent design parameters to be used for the replacement system. The following additional scope of work is for the condition assessment services.

- A. Professional will conduct a project kick-off meeting with City staff at City Office. The project kick-off meeting will discuss project expectations, schedule, deliverables and confirm project goals. The project kick-off meeting will also include a discussion of the design approach and general confirmation of the preliminary design concepts. Professional will conduct M-Teams virtual progress meetings with City staff to review work completed to date, project schedule, and other issues.
- B. Professional will perform Data Collection and Analysis - Record Research, Operational and Performance Data Review. Site visit and field investigation and follow-up as needed.
- C. Hazard mitigation improvements for resiliency and current flood plain code compliance with respect to electrical panels and location of mechanical and other critical equipment.
- D. Identification of areas for improvement to efficiency, performance, or reliability of the UV facility.

Exhibit A / Detailed Scope of Services

- E. Electrical and Instrumentation requirements to accommodate proposed process updates and technology changes, and a condition assessment of existing power, control wiring, and standby generation capacity.
- F. Professional will attend one M-Teams virtual progress meeting prior to submission of the draft Condition Assessment and one after submission (if needed) to review final comments from the City. These meetings will be combined with subsequent submittal meetings later defined in this scope to keep overall meeting effort minimized.
- G. Deliverables:
 - 1. The Professional will provide an electronic copy of the draft Condition Assessment Report to the City for review and comments.
 - 2. After receipt of review comments, the Professional will attend a City review meeting via M-Teams to understand and discuss responses to the review comments.
 - 3. Professional shall incorporate review comments, as appropriate, and submit an electronic copy (pdf) of the final Condition Assessment Report.

Task 2 – Preliminary Design Phase Services

- A. Create and run hydraulic model with current condition and with identified proposed alternate improvements to confirm viability of design alternates. Identify aspects to be rehabilitated and/or replaced.
- B. Develop a construction sequencing and bypass plan to obtain a more accurate cost of project.
- C. Develop a capital OPCC estimate commensurate with the 20% design submittal effort. Perform LCCA estimates to aid in determining potential UV technology selection, hydraulic profile selection option, etc.
- D. Deliverables:
 - 1. The Professional will provide an electronic copy of the draft PER to the City complete with plan and section exhibits and associated OPCC and LCCA estimates.
 - 2. After receipt of review comments, the Professional will attend a City review meeting to understand and discuss responses to the review comments.
 - 3. Professional shall incorporate review comments, as appropriate, and submit an electronic copy (pdf) of the final PER.
 - 4. Electronic copy of the PER Review Presentation
 - 5. Meeting Minutes documenting decisions
 - 6. OPCC updated reflecting decisions made.

SCHEDULE

Professional shall initiate each phase of work described herein immediately upon the execution of the Agreement and upon issuance by City of Notice to Proceed.

- A. Condition Assessment
 - 1. Professional shall submit the Draft Report deliverable within 75 calendar days of Notice to Proceed.

Exhibit A / Detailed Scope of Services

2. Professional shall submit the Final Report deliverable within 30 calendar days from receipt of City's comments on the Draft Report.
- B. Preliminary Engineering Report
1. Professional shall submit the Draft PER within 150 calendar days of the Notice to Proceed.
 2. Professional shall conduct PER Presentation Meeting within 30 calendar days of Draft PER submission.
 3. Professional shall submit the final PER within 20 calendar days of the PER Presentation.

CLARIFICATIONS AND EXCLUSIONS

- A. It is assumed that improvements will be confined within the existing City property (inclusive of former Dog Pound property) and no work will be done outside of the plant fence, including modification of the outfall or discharge piping.
- B. Professional understands that existing stormwater detention may not be adequate for proposed improvements, so analysis of runoff may be required in the future Final Design Phase.
- C. No geotechnical work is anticipated and therefore not included in this phase. Geotechnical will be required for Final Design for new structures.
- D. No survey work is anticipated in this phase and therefore not included. Past Record Drawings will be relied upon for proposed PER work. Survey will be required for Final Design.
- E. No landscaping or arborist services are anticipated and therefore not included in this phase of the project.

Exhibit A / Detailed Scope of Services

**TABLE A-1
TO AGREEMENT BETWEEN PROFESSIONAL AND CITY FOR PROFESSIONAL SERVICES
FOR
DALLAS SALMON WWTP UV SYSTEM REPLACEMENT**

BASIC SERVICES FEES

TASK NO.	SUBTASK NO.	TASK DESCRIPTION	AMOUNT
BASIC SERVICES (LS)			
Task 1	LS	Condition Assessment	\$ 116,700
Task 2	LS	Preliminary Design Report	\$ 294,000
Subtotal Basic Services			\$ 410,700
SPECIAL SERVICES			
ADDITIONAL SERVICES			
TOTAL CONTRACT AMOUNT			\$ 410,700

NOTE:

LS – Lump Sum

TABLE A-2
TO AGREEMENT BETWEEN PROFESSIONAL AND CITY FOR PROFESSIONAL SERVICES
FOR
DALLAS SALMON WWTP UV SYSTEM REPLACEMENT
HOURLY LABOR BILLING RATES

LABOR CATEGORY	Max Hourly Billing Rate
Project Director	\$300
Technical Director, Specialist, or QA/QC Reviewer	\$300
Senior Project Manager	\$285
Senior Project Professional 7/8	\$280
Project Professional 5/6	\$260
Project Professional 3/4	\$175
Cost Estimator	\$150
CAD Designer	\$165
Word Processor	\$100
Contract Admin	\$100
Construction Manager	\$200
Sr. Resident Project Representative	\$150
Resident Project Representative	\$150
Construction Administrative Assistant	\$100