

AGREEMENT FOR ENGINEERING & DESIGN SERVICES

For

City of Deer Park - Avon St EST Rehab

This Agreement is made and entered into in Deer Park, Harris County, Texas on the _____ day of _____ 2024; by and between

The City of Deer Park, a Municipal Corporation in the State of Texas

And

Lockwood Andrews & Newnam, Inc. ENGINEER(s) duly licensed, and practicing under the laws of the State of Texas.

Said Agreement being executed by the City pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by the ENGINEER for ENGINEERING services hereinafter set forth in connection with the above-designated Project for the City of Deer Park.

DEER PARK retains Lockwood, Andrews & Newnam, Inc. to perform ENGINEERING services related to the design and construction of Avon Street Elevated Storage Tank in return for consideration to be paid by DEER PARK under terms and conditions set forth below.

ARTICLE 1. SCOPE OF WORK

- 1.1 ENGINEER will provide ENGINEERING, design, consultation, project management, and other services as required to perform and complete the Scope of Work & Services specifically identified in Schedule A of this Agreement. The Services Scope of Work (the “Work”) and the time schedules set forth in Schedule A are based on information provided by DEER PARK and ENGINEER. The schedule of milestones and deliverables are essential terms of this Agreement.
- 1.2 If this information is incomplete or inaccurate, or if site conditions are encountered which materially vary from those indicated by DEER PARK, or if DEER PARK directs ENGINEER to change the original Scope of Work shown in Schedule A, a written amendment equitably adjusting the costs, performance time and/or terms and conditions, shall be executed by DEER PARK and ENGINEER.

ARTICLE 2. COMPENSATION

- 2.1 ENGINEER bills for its services on the basis listed in the following sentences using the Schedule of Rates and Terms entitled Estimated Level of Effort (“Schedule of Rates”) attached as Schedule B of this Agreement. As requested, ENGINEER has provided an estimate of the fees for the design phase services is a lump sum fee of \$45,000.00 and the fee for bidding phase services is on a time and materials, not to exceed, with a maximum of \$10,000.00. LAN proposes to provide our construction phase services on a time and materials basis accrued in accordance with the attached estimated fee, based on an estimated 90 calendar days of construction. We estimate the fee for our construction phase services to be approximately \$60,000. Our estimated fee does not include overtime or costs

associated for additional site visits if required because materials used were found not to be in compliance with the project plans or specifications. Any additional services requested and not part of the estimated fee will be charged in accordance with the attached Schedule of Fees found in Schedule B.

ENGINEER will not exceed that estimate without prior approval from DEER PARK. ENGINEER will notify DEER PARK, for approval, of any proposed revisions to the Schedule of Rates and effective date thereof which shall not be less than thirty (30) days after such notice.

- 2.2 ENGINEER will submit monthly invoices for Services rendered, and DEER PARK will make payment within thirty (30) days of receipt of ENGINEER'S invoices. If DEER PARK objects to all or any portion of an invoice, it will notify ENGINEER of the same within fifteen (15) days from the date of receipt of the invoice and will pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion of the invoice. Prices or rates quoted do not include state or local taxes.

ARTICLE 3. DEER PARK'S RESPONSIBILITIES

- 3.1 DEER PARK will designate in writing the person or persons with authority to act on DEER PARK's behalf on all matters concerning the work to be performed.
- 3.2 DEER PARK will furnish to ENGINEER all existing studies, reports, data and other information available to DEER PARK necessary for performance of the Work, authorize ENGINEER to obtain additional data as required, and furnish the services of others where necessary for the performance of the Work. ENGINEER will be entitled to use and rely upon all such information and services.
- 3.3 Where necessary to performance of the Work, DEER PARK shall arrange for ENGINEER to have access to any site or property.

ARTICLE 4. PERFORMANCE OF SERVICE

- 4.1 ENGINEER's services will be performed within the schedule and time period set forth in Schedule A.
- 4.2 ENGINEER shall perform the Work, and any additional services as may be required, for the development of the Project to completion.
- 4.3 If required, additional services will be performed and completed within the time period agreed to in writing by the parties at the time such services are authorized.
- 4.4 If any time period within or date by which any of ENGINEER's services are to be performed is exceeded for reasons outside of ENGINEER's reasonable control, all rates, measures and amounts of compensation and the time for completion of performance shall be subject to equitable adjustment.

ARTICLE 5. CONFIDENTIALITY

- 5.1 ENGINEER will hold confidential all information obtained from DEER PARK, not previously known by ENGINEER or in the public domain.

ARTICLE 6. STANDARD OF CARE & WARRANTY

- 6.1 Standard of Care. In performing services, ENGINEER agrees to exercise professional judgment, made on the basis of the information available to ENGINEER, and to perform its ENGINEERING services with the professional skill and care of competent design professionals practicing in the same or similar locale and under the same or similar circumstances and professional license. ENGINEER also agrees to perform its ENGINEERING services as expeditiously as is prudent considering this standard of care. This standard of care shall be judged as of the time and place the services are rendered, and not according to later standards.
- 6.2 Warranty. If any failure to meet the foregoing standard of care Warranty appears during one year from the date of final completion of the service and ENGINEER is promptly notified thereof in writing, ENGINEER will at its expense re-perform the nonconforming work.
- 6.3 The foregoing Warranty is the sole and express warranty obligation of ENGINEER and is provided in lieu of all other warranties, whether written, oral, implied or statutory, including any warranty of merchantability. ENGINEER does not warrant any products or services of others. ENGINEER, however, expressly acknowledges that these warranty obligations do not eliminate the applicability of the standard of care to all of its work and that the OWNER may still retain remedies against ENGINEER following the expiration of the warranty period in contract, tort, or otherwise as the law allows.

ARTICLE 7. INSURANCE

- 7.1 ENGINEER will procure and maintain insurance as required by law. At a minimum, ENGINEER will have the following coverage:
- (1) Workers compensation and occupational disease insurance in statutory amounts.
 - (2) Employer's liability insurance in the amount of \$1,000,000.
 - (3) Automobile liability in the amount of \$1,000,000.
 - (4) Commercial General Liability insurance for bodily injury, death or loss of or damage to property of third persons in the amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate.
 - (5) Professional errors and omissions insurance in the amount of \$1,000,000.

7.2 ENGINEER has provided a Statement of Insurance to DEER PARK demonstrating and reflecting that ENGINEER has procured and maintains insurance coverage in accordance with the requirements stated above. That Statement of Insurance is Attachment C of this Agreement.

ARTICLE 8. INDEMNITY

8.1 THE ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LOSSES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS, DAMAGES, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND ATTORNEY'S FEES, RESULTING FROM PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, BUT ONLY TO THE EXTENT THAT SUCH PERSONAL INJURY, PROPERTY DAMAGE OR HARM IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE ENGINEER OR THE ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL.

IF THE CITY DEFENDS AN ACTION, CLAIM, LAWSUIT OR OTHERWISE INCURS ATTORNEY'S FEES AS A RESULT OF AN INDEMNIFIED CLAIM AS STATED ABOVE, ENGINEER AGREES TO REIMBURSE THE CITY IN PROPORTION TO THE ENGINEERS LAIBILITY.

8.2 ENGINEER agrees to and shall contractually require its consultants and subcontractors of any tier to assume the same indemnification obligations to Indemnities as stated herein.

ARTICLE 9. OWNERSHIP OF DOCUMENTS

9.1 As long as DEER PARK is current in the payment of all undisputed invoices, all work product prepared by the ENGINEER pursuant to this Agreement, including, but not limited to, all Contract Documents, Plans and Specifications and any computer aided design, shall be the sole and exclusive property of DEER PARK, subject to the ENGINEER's reserved rights.

9.2 ENGINEER's technology, including without limitation customary techniques and details, skill, processes, knowledge, and computer software developed or acquired by ENGINEER or its Consultants to prepare and manipulate the data which comprises the instruments of services shall all be and remain the property of the ENGINEER.

ARTICLE 10. INDEPENDENT CONTRACTOR

10.1 The ENGINEER is an independent contractor and shall not be regarded as an employee or agent of the DEER PARK.

ARTICLE 11. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

- 11.1 The ENGINEER shall observe all applicable provisions of the federal, state and local laws and regulations, including those relating to equal opportunity employment.

ARTICLE 12. SAFETY

- 12.1 DEER PARK shall inform the ENGINEER and its employees of any applicable site safety procedures and regulations known to DEER PARK as well as any special safety concerns or dangerous conditions at the site. The ENGINEER and its employees will be obligated to adhere to such procedures and regulations once notice has been given.
- 12.2 ENGINEER shall not have any responsibility for overall job safety at the site. If in ENGINEER's opinion, its field personnel are unable to access required locations or perform required services in conformance with applicable safety standards, ENGINEER may immediately suspend performance until such safety standards can be attained. If within a reasonable time site operations or conditions are not brought into compliance with such safety standards, ENGINEER may in its discretion terminate its performance, in which event, DEER PARK shall pay for services and termination expenses as provided in Article 18.

ARTICLE 13. LITIGATION

- 13.1 At the request of DEER PARK, ENGINEER agrees to provide testimony and other evidence in any litigation, hearings or proceedings to which DEER PARK is or becomes a party in connection with the work performed under this Agreement, unless DEER PARK and the ENGINEER are adverse to one-another in any such litigation.
- 13.2 Any litigation arising out of this Agreement between DEER PARK and ENGINEER shall be heard by the state district courts of Harris County.

ARTICLE 14. NOTICE

- 14.1 All notices to either party by the other shall be deemed to have been sufficiently given when made in writing and delivered in person, by electronic mail, facsimile, certified mail or courier to the address of the respective party or to such other address as such party may designate.

ARTICLE 15. TERMINATION

- 15.1 The performance of work may be terminated or suspended by DEER PARK, for any reason. Such suspension or termination shall be subject to notice of DEER PARK's election to either suspend or terminate the Agreement fifteen (15) days' prior to the effective suspension or termination date. The Notice shall specify the extent to which performance of work is suspended or terminated and the date upon which such action shall become effective. In the event work is terminated or suspended by DEER PARK prior to the completion of services contemplated hereunder, ENGINEER shall be paid for (i) the services rendered to the date of termination or suspension and reasonable services provided to effectuate a professional and timely project termination or suspension.

ARTICLE 16. SEVERABILITY

16.1 If any term, covenant, condition or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

ARTICLE 17. WAIVER

17.1 Any waiver by either party or any provision or condition of this Agreement shall not be construed or deemed to be a waiver of a subsequent breach of the same provision or condition, unless such waiver is so expressed in writing and signed by the party to be bound.

ARTICLE 18. GOVERNING LAW

18.1 This Agreement will be governed by and construed and interpreted in accordance with the laws of the State of Texas.

ARTICLE 19. CAPTIONS

19.1 The captions contained herein are intended solely for the convenience of reference and shall not define, limit or affect in any way the provisions, terms and conditions hereof or their interpretation.

ARTICLE 20. ENTIRE AGREEMENT

20.1 This Agreement, its articles, provision, terms, and attached Schedules represent the entire understanding and agreement between DEER PARK and ENGINEER and supersede any and all prior agreements, whether written or oral, and may be amended or modified only by a written amendment signed by both parties.

This Agreement is effective on the last day signed.

Lockwood, Andrews & Newnam, Inc.

The City of Deer Park

By Stephen A. Gilbreath

By _____

Name _____

Name _____

Stephen A. Gilbreath

Title Vice President – COO

Title _____

Date March 14, 2024

Date _____

**SCHEDULE A
SCOPE OF WORK**

The proposed project consists of providing construction drawings and specifications for a proposed Avon St. Elevated Storage Tank Facility. The drawings and specifications will include construction details for the following major components:

Engineering Services & Schedule:

Lockwood, Andrews & Newnam, Inc. presents this proposal to complete design ENGINEERING and construction services. Lockwood, Andrews & Newnam, Inc. will complete the following tasks:

A. Design Phase Services

1. Coordination with Geotechnical Engineer and Structural Engineer.
2. Prepare civil site plans to include:
 - a. Cover Sheet
 - b. General Construction Notes
 - c. Dimension Control
 - d. Site Utility Layout
 - e. Water Details
 - f. Structural Details provided by Tank Industrial Consultants
3. Prepare Plans and Cost Estimate for 50% Review, 75% Review, and 100% Review.
4. Prepare plans and specifications for initial review from appropriate reviewing agencies.
5. Provide a hard copy and PDF copy of the final civil site plan drawings.
6. Provide an opinion of probable construction cost for the civil site work and utilities.

B. Bidding Phase Services

1. Assist Owner during Bidding Phase including:
 - a. Prepare Bidding Documents for Civil Site Work.
 - b. Assist Owner in Soliciting/Qualifying Bidders.
 - c. Assist Owner in Meeting Minutes, Answer Questions and Prepare Addendums.
 - d. Assist Owner in Creating Final Set of Drawings, which include Addendums.
 - e. Assist Owner in Preparing Civil Contracts.

C. Construction Phase Services

1. Assist Owner during Construction Phase (estimated 90 calendar construction time frame) including:
 - a. Preconstruction meeting/minutes
 - b. Review submittals for Civil Site Work/Coordinate Submittals with Sub Consultants (20submittals)
 - c. Site Observation services (2-hour site visit per week, when contractor is onsite)
 - d. Correspondence with Contractor and Owner during construction (3 Hours per week, as needed)
 - e. Assist Owner in Reviewing Pay Applications and Invoices (4 monthly invoices, when directed by Owner)
 - f. Attend Project Meetings & Provide Meeting Minutes (4 meetings, when directed by Owner)
 - g. Pre-Final Inspection Walkthrough and Punch List
 - h. Final Inspection and Punch List
 - i. Review As-Built Drawings prepared by contractor and submit to Owner at project close out.

Design Completion:

Based on requirements provided by the City, ENGINEER will complete necessary ENGINEERING analyses and calculations to design the Avon St. Elevated Storage Tank facility. ENGINEER will hold a design review meeting with (Construction Manager if applicable) and the City to refine all associated documents (i.e., drawings, specifications and all other necessary documents) to ensure that construction is completed in a proper and efficient manner after each submittal.

Formatting Services:

ENGINEER will work with the City to obtain the proper permits as required by TCEQ, Railroad Commission, and local entities. ENGINEER will facilitate face-to-face meetings with regulators to fast track permit approvals. ENGINEER will provide updates of SPCC and SWPPP plans for the City for the improvements of this project only.

**SCHEDULE B
COMPENSATION AND RATES**

Position	Rate
Principal	\$270
Project Manager	\$200
Senior ENGINEER	\$190
Project ENGINEER	\$172
ENGINEER in Training	\$136
CAD Technician	\$150
Administration	\$125

**ATTACHMENT C
STATEMENT OF INSURNACE**