

AGREEMENT FOR ENGINEERING SERVICES

for

American Water Infrastructure Act (AWIA) Compliance Study

This Agreement is made and entered into in Deer Park, Harris County, Texas on **June 2, 2020**, by and between

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

And

KIT Professionals, 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 **KIT Professionals, Inc.** to perform engineering analysis services related to drainage projects in Deer Park on a task order basis, 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 Exhibit A of this Agreement. The Services Scope of Work (the “Work”) and the time schedules set forth in **Exhibit 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 **Exhibit 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 a time and materials basis using the Schedule of Rates and Terms entitled Estimated Level of Effort (“Schedule of Rates”) attached as Exhibit A of this Agreement. As requested, ENGINEER has provided an estimate of the fees for the

Work amounting **\$99,820.00 (ninety-nine thousand, eight-hundred and twenty dollars and zero cents)**. 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 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.

KIT Professionals, Inc

By _____

Name _____

Title _____

Date _____

The City of Deer Park

By _____

Name _____

Title _____

Date _____

May 19, 2020

Nicholas Cook
Water Plant Supervisor
City of Deer Park
2117 E. X Street
Deer Park, TX 77536

Re: City of Deer Park – American Water Infrastructure Act (AWIA) Compliance Study

Dear Mr. Cook,

Under the America's Water Infrastructure Act (AWIA) of 2018 that amended the Safe Drinking Water Act, the Environmental Protection Agency (EPA) is requiring community water systems serving more than 3,300 person to prepare or update risk and resiliency assessments (RRAs) and emergency response plans (ERPs) and certify to EPA that they are prepared and updated on a five year cycle. The City of Deer Park (City) has expressed the desire to perform an AWIA compliance study of its water system. City has retained KIT Professionals, Inc. (KIT) to prepare the RRA and ERP. Following is a description of the KIT's Scope of Services to conduct the AWAI compliance study.

Task 1. Project Kick Off Meeting and Management (\$3,510)

KIT will coordinate a project kickoff meeting with all the City stakeholders. The goal of this meeting is to identify and establish a clear set of goals and objectives for the study, review key schedule milestones and develop preliminary data needs list. KIT will summarize the discussions and actions items from the meeting as minutes.

KIT will coordinate progress meetings and provide updates to the City on the progress of activities, planned activities and discuss interim findings and observations. KIT will summarize the discussions and action items from the progress meetings as minutes. Scope assumes up to six progress meetings over the duration of the study.

Task 2. Data Collection and Analysis (\$3,800)

Preparation of the AWIA compliance study will require collection, analysis and summarization of existing data including, but not limited to, information on all water facilities, existing vulnerability assessment and emergency response plan prepared for the City's water system. KIT will review the data for any missing gaps and recommend additional data necessary to collect to complete the project. Should additional studies be required to complete the project, KIT will submit proposals under separate cover.

Task 3. Risk and Resiliency Assessment (\$46,550)

KIT will partner with the City to conduct the RRA. With guidance from the *Baseline Information on Malevolent Acts Relevant to Community Water Systems* issued by EPA in November 2019, KIT will perform a threat asset pairing to determine all the potential scenarios that could impact the water assets based upon the probability of threat to that asset. Based upon the threat-asset pairing, KIT will estimate the consequences for disruption of service scenarios identified. KIT will then evaluate the existing countermeasures in place to address the disruption of service scenarios identified. KIT proposes to conduct the assessment using the Program to Assist in Risk and Resilience Examination (PARRE) tool that can be used to assess vulnerabilities and evaluate improvements for a utility.

KIT will then conduct a risk reduction workshop with all key City stakeholders to explain the threat-asset pairs, consequences and countermeasures in place and identify risks that are not considered significant threats and no longer need to be identified. The required considerations for the RRA include the following elements:

- Risks to the system from malevolent acts, natural hazards, and inter-dependencies
- Resilience of system components
- Monitoring practices
- Financial infrastructure of the utility
- Use, storage, and handling of various chemicals
- Operation and maintenance
- Evaluation of capital and operational needs for risk and resilience management

KIT will prepare a draft RRA report to the City for review and comment. KIT will address the comments received from the City and finalize the RRA. KIT will assist the City with notifying EPA about completion of RRA.

Task 4. Emergency Response Plan (\$45,960)

Based on the information gathered in Tasks 2 and 3, KIT will prepare the ERP to address the risks identified. The ERP will include the following elements:

- Response to and recovery from threats and hazards identified.
- Incorporation of the National Incident Management Systems (NIMS)
- Identify mutual aid
- Internal and external communication templates

The ERP is required to consider the following

- Strategies and resources to improve the resilience of the system
- All-hazards approach
- Physical security and cybersecurity
- Alternative source water options
- Detection of malevolent acts or natural hazards and inter-dependencies
- Actions, procedures and equipment which can avert or significantly lessen the impact of
- Coordination with existing local emergency planning committees

KIT will submit the draft ERP to City for review and comment. KIT will address the comments received from the City and finalize the ERP. KIT will provide staff training as required to follow the ERP. KIT will assist the City with notifying EPA about completion of ERP.

Fee Estimate

KIT will complete Tasks 1-4 for a not-to-exceed lump sum fee of **\$99,820**. The task-by-task fee estimates are shown in the table below. Detailed level of effort and fee estimate is included in the attachment.

Task	KIT Fee Estimate
1. Project Kickoff Meeting and Management	\$3,510
2. Data Collection and Analysis	\$3,800
3. Risk and Resiliency Assessment	\$46,550
4. Emergency Response Plan	\$45,960
Total	\$99,820

Proposed Schedule

The EPA requires the RRA for utilities with less than 50,000 people to be completed by June 30, 2021. KIT proposes to complete the RRA by **November 3, 2020** to allow adequate time for review and finalizing before the June deadline.

The EPA requires the ERP for utilities with less than 50,000 people to be completed by December 31, 2021. KIT proposed to complete the ERP by **March 27, 2021** to allow adequate time for review and finalizing before the December deadline.

We are excited to submit this proposal to assist the City with this critical study. Please feel free to call me at (713) 231-4403 if you have any questions.

Regards,

KIT Professionals, Inc.



Sunil Kommineni, PhD, P.E., BCEE
Project Manager

Enclosure

Detailed Level of Effort and Fee Estimate

City of Deer Park, Texas
American Water Infrastructure Act (AWIA) Compliance Study
KIT's Fee Estimate

Level of Effort

		Budgeted Hours				
		Project Manager	Project Engineer	Staff Engineer	Admin. Assist. / Biller	Subtotal Hours
Task No.	Task Description					
1	Project Kick off and Management	16	18	0	6	40
a	Project Kick Off Meeting	4	4		2	10
b	Develop Project Schedule	2	2			4
c	Project Management Activities	4			4	8
d	Project Meetings (6 Total)	6	12			18
2	City of Deer Park Data Collection and Analysis	3	8	16	0	27
a	Existing Document Review	1	2	8		11
b	Identify Gap Analysis	1	2	8		11
c	Provide Clarifications	1	4			5
3	Risk and Resiliency Assessment	35	104	190	0	329
a	Threat-Asset Pairing	8	20	40		68
b	Estimate Consequence for Disruption of Service Scenarios	4	16	36		56
c	Evaluate Existing Countermeasures	4	16	22		42
d	Risk Reduction Workshop	8	12	8		28
e	Implement within PARRE Tool	2	12	32		46
f	Submit Draft Review Document	4	18	40		62
g	Review Workshop	4	4			8
h	Submit Final Document	1	6	12		19
4	Emergency Response Plan	32	115	172	0	319
a	ERP Outline Review	8	24	36		68
b	Plan Development Meetings	4	12	16		32
c	Review Resilience Strategies	4	20	28		52
d	Develop Emergency Plans and Procedures	2	8	8		18
e	Develop Mitigation Actions	2	15	32		49
f	Outline Detection Strategies	4	18	32		54
g	ERP Draft Review Meeting	4	4			8
h	Submit Final Document	2	6	12		20
i	Provide Staff Training	2	8	8		18
	Total Hours	114	351	584	0	1049

Fee Estimate

		Budgeted Amounts				
		Project Manager	Project Engineer	Staff Engineer	Admin. Assist. / Biller	Subtotal Amounts
Task No.	Task Description					
	Billing Rate per Hour	\$225	\$180	\$105	\$78	
1	Project Kick off and Management	\$1,350	\$2,160	\$0	\$0	\$3,510
2	City of Deer Park Data Collection and Analysis	\$675	\$1,440	\$1,680	\$0	\$3,800
3	Risk and Resiliency Assessment	\$7,875	\$18,720	\$19,950	\$0	\$46,550
4	Emergency Response Plan	\$7,200	\$20,700	\$18,060	\$0	\$45,960
	Total Fee Estimate (Lump Sum)					\$99,820

Project Schedule
City of Deer Park AWIA Compliance

