



AGENDA ITEM FACT SHEET

*This fact sheet is the basis for a decision by the City Council.
Please insure that the information is clear, concise and current.*

Division/Department: Intergovernmental

Date: 12/30/2019

Title: Introduction of an ordinance authorizing the Mayor to enter into a professional services contract with Kyte Consulting LLC of Ruston to provide an independent perspective on various strategic options regarding the City's Utilities System.

Explanation of Proposal:

Additional Information Attached ☐

As the City of Alexandria evaluates options and opportunities for the future its Utilities System, a range of issues, concerns and local impacts will need to be considered, addressed and communicated to local, state and federal elected officials, regulatory agencies and the citizens of Alexandria. To support the City in these efforts, the Mayor's Office proposes to retain the services of Kyte Consulting LLC of Ruston to provide process, communication and other guidance as well as an independent perspective regarding options available to the City.

Budget:

☐

Neutral

☒

Within
Existing

☐

Requires
Amendment

Account Number: 101-020800-531110

Expense Amount: \$50,000

Account Line Item: Professional Fees and Services

Remaining Amount: \$50,000

Authorization:

1. Mayor

2. Chief Operating Officer

3. City Attorney

4. Finance Director

5. Division Director

6. Department Head

7. Purchasing Agent

Council Staff

Form ☐

Review:

Content ☐

Information:

Sufficient ☐

Insufficient ☐

Remarks:

RECEIVED

DEC 31 2019

CITY COUNCIL


10:35A



ORDINANCE NO.


AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH KYTE CONSULTING LLC OF RUSTON TO PROVIDE AN INDEPENDENT PERSPECTIVE ON VARIOUS STRATEGIC OPTIONS REGARDING CITY'S UTILITIES SYSTEM AND OTHER MATTERS WITH RESPECT THERETO.

SECTION I: BE IT ORDAINED by the Council of the City of Alexandria, Louisiana, in legal session convened, that the Council hereby authorizing the Mayor to enter into a Professional Services contract with kyte Consulting LLC of Ruston to provide an independent perspective on various strategic options regarding city's utilities system.



SECTION II: BE IT FURTHER ORDAINED, etc., that this ordinance shall become effective upon signature by the Mayor; or, if not signed or vetoed by the Mayor, upon expiration of the time for ordinances to become law without signature by the Mayor.

SECTION III: BE IT FURTHER ORDAINED, etc., that if any provision or item of this ordinance or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this ordinance which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this ordinance or hereby declared severable.



SECTION IV: BE IT FURTHER ORDAINED, etc., that all ordinances or parts of ordinances in conflict herewith are hereby repealed.

THIS ORDINANCE was introduced on the 7th day of January, 2020.

NOTICE PUBLISHED on the 10th day of January, 2020.

THIS ORDINANCE having been submitted in writing, introduced and published, was then submitted to a final vote as a whole, the vote thereon being as follows:

YEAS:

NAYS:

ABSENT:

AND THE ORDINANCE was declared adopted on this the ____ day of January, 2020 and final publication was made in the Alexandria Daily Town Talk on the ____ day of January, 2020.

CITY CLERK

PRESIDENT

MAYOR'S
APPROVAL/VETO

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE CITY OF ALEXANDRIA
AND
KYTE CONSULTING

THIS AGREEMENT, effective on the ____ day of _____, 2020, made and entered into on the days and dates shown below, by and between the City of Alexandria (hereinafter referred to as the "City"), represented herein by its duly elected Mayor, Jeffery W. Hall;

AND

Kyte Consulting LLC (hereinafter referred to as "Contractor" or "KYTE"), a domestic corporation, represented herein by, _____ John Kyte, Principal _____, pursuant to a corporate resolution attached hereto and made a part hereof, with its principal place of business at 429 Forest Circle, Ruston, LA 71270.

ARTICLE 1
RECITALS

WHEREAS, the City desires to employ Kyte Consulting LLC, to provide the following services: Work closely with the Mayor of Alexandria, senior City management personnel and City legal counsel to Support the conduct by a third-party of a thorough assessment and valuation of the City's utility assets and options for changes to the current system; Provide public and regulatory issues management and communications counsel related to the utility system, including message and materials development and public hearing support services; and, Develop and implement a public education, media relations and government relations program to develop public understanding of the issues and options related to the utility system.

WHEREAS, David Michael Williams, City Attorney, recommends this Agreement with David Michael Williams having certified this Agreement meets the Administration's three-way test of the value of adding the services, addressing the niche that civil service does not and is not suited to currently address, and meeting an articulable need; and

WHEREAS, more particularly, this determination to recommend this Agreement considered the policy of the Administration to: (i) ensure the City has permanent personnel for services of continuing need; (ii) ensure the City has access to and control of the programming and operations at all times; (iii) ensure that if Kyte Consulting LLC is used there exists the following: (A) a declared need for professional services certified to be outside the scope of what the City can provide; (B) a declaration such professional services are not more appropriately committed to civil service; (C) a declaration that the professional services fulfill a particular, specialized need which must be addressed; and (D) a declaration that the professional services are limited to the City's needs and not open-ended;

WHEREAS, Kyte Consulting LLC has considerable experience and has provided professional services of the nature requested herein, and having appropriate knowledge of the various operational apparatuses of the City;

WHEREAS, the City desires to undertake this Agreement under the auspices and supervision of the office of the Mayor as instructed by the City Attorney, David Michael Williams, which instruction shall be final and binding in all respects including, but not limited to, performance parameters, confidentiality, interpretation of existing law, policy, and strategy, unless violative of codes of professional conduct, ethical rules, or this Agreement; and ensuring proposals to follow policy guidelines resulting in deliverables of a substantial nature and accounting for those deliverables; ensuring the Mayor, Mayor's staff and the City Council remain informed about the status of this Agreement; ensuring the relevant officials for the city are prepared and informed; and

WHEREAS, Kyte Consulting LLC is qualified to do the work required by this Agreement for the City given its extensive background and expertise.

NOW THEREFORE, Kyte Consulting LLC and the City mutually agree as follows:

ARTICLE 2 **TERMS AND CONDITIONS**

Scope of Agreement. Provide public and regulatory issues management and communications counsel related to the utility system, including message and materials development and public hearing support services; and, Develop and implement a public education, media relations and government relations program to develop public understanding of the issues and options related to the utility system.

Term of Agreement. Kyte Consulting LLC agrees to provide consulting, as needed from the effective date of this Agreement.

Billing Terms. The City shall pay Kyte Consulting LLC a fixed-fee retainer of \$7,500.00. It is understood that the actual value of services per month may vary based on the specific services needed in each month. Professional fees for the scope of work outlined above will be billed to the City as stated in the Billing/Payment Terms below. Expenses such as photography or videography, travel and related expenses and third-party vendor invoices will be billed in addition to the fees noted below. Production related third-party vendor costs may bear a commission of 10 percent, to be agreed upon in advance. Production-related services are items such as printing, mechanical and art costs for printing, including typography and comprehensive layouts, and audiovisual production costs, including props, scenery, sound and lighting, rights, license fees and producer's fees

Privacy of Information. Kyte Consulting LLC will make reasonable efforts to maintain the confidentiality of all information, data and documents supplied to and used by it in performance of this Agreement. Kyte Consulting LLC agrees not to disclose or disseminate this information, data or documents without the prior written consent of the City. Notwithstanding the foregoing, the City agrees that Kyte Consulting LLC shall have the right to use such information, data or documents for the purpose of preparing and disseminating analytical reports inclusive of the City's information, data or documents, provided such use in no way specifically identified the City, its operations or expenses.

Amendment to Agreement. This engagement can be cancelled at any time with 30 days written notice. Client will be responsible for payment of all hourly fees, whichever is greater, plus expenses incurred to date (including the 30 days following the notification).

Kyte Consulting LLC herein expressly agrees and acknowledges that it and its employees are Independent Contractors as defined in LSA R.S. 23:1020(5) and, as such, it is expressly agreed and understood between the parties that the City of Alexandria shall not be liable to Kyte Consulting LLC or any of its employees, sub-contractors, sub-consultants, agents, consultants or contractors for any benefit or coverage provided by the Workman's Compensation Laws of the State of Louisiana.

Waiver of Sick and Annual Benefits. It is expressly agreed and understood between the parties entering into this Agreement that Kyte Consulting LLC, as an independent contractor, shall not be entitled to nor receive any sick and annual benefits from the City.

Nonemployment. The City shall not be considered the employer of Kyte and Kyte Consulting LLC acknowledges this relationship is one of Contract and subject only to the provisions of this Agreement.

Appropriation. The continuation of this agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the City Council. If the City Council fails to appropriate sufficient monies to provide for the continuation of the Agreement, or if such appropriation is reduced by the veto of the Mayor or by any means provided in the appropriating ordinance or Charter to prevent the total appropriation for the year based on Section 5-04 of the Alexandria Home Rule Charter, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the agreement, the Agreement shall terminate five days thereafter, or as provide by message from the Mayor or the Ordinance.

ARTICLE 3 **RESPONSIBILITIES OF KYTE CONSULTING**

Continuation of Services. Kyte Consulting LLC will be a consulting the City on an as needed basis, service and performance for the City, which will be unchanged as a result of this Agreement. In the event a service is currently being provided, but is not specifically enumerated below, such service shall continue pursuant to this Agreement. Kyte Consulting LLC shall:

Insurance Procurement. Maintain appropriate insurance coverage, including but not limited to, Workers' Compensation, General Liability, Automobile Liability, Fidelity Bond and Errors and Omissions, with minimum limits of one million dollars (\$1,000,000.00) per occurrence.

Certificates of Coverage. Provide to the City upon written request, Certificates of Insurance evidencing Kyte Consulting General Liability Insurance, Automobile Liability Insurance, Workers' Compensation Insurance, Fidelity (Bond) and Errors and Omissions Insurance (Professional Liability Coverage) providing coverage to them.

Kyte Consulting reserves the right, at its sole discretion, not to commence or continue any services under this engagement if Client fails to remit any payment due hereunder within the time frame specified herein. It is clearly understood and agreed that should Kyte Consulting exercise its right hereunder, Kyte Consulting shall not be liable for any costs whatsoever (including without limitation, any cancellation fees or penalties), arising out of or resulting from Kyte Consulting exercising such right.

Any work beyond the scope of work outlined in this engagement letter will be negotiated separately and outlined in an amendment to this agreement, or a separate engagement letter, on a per project basis. No such additional work will begin without the prior written agreement of both parties.

Additional Obligations. Kyte Consulting reserves the right, at its sole discretion, not to commence or continue any services under this engagement if Client fails to remit any payment due hereunder within the time frame specified herein. It is clearly understood and agreed that should Kyte Consulting exercise its right hereunder, Kyte Consulting shall not be liable for any costs whatsoever (including without limitation, any cancellation fees or penalties), arising out of or resulting from Kyte Consulting exercising such right.

Any work beyond the scope of work outlined in this engagement letter will be negotiated separately and outlined in an amendment to this agreement, or a separate engagement letter, on a per project basis. No such additional work will begin without the prior written agreement of both parties.

ARTICLE 4
RESPONSIBILITIES OF CITY

ARTICLE 5
TERMINATION

This Agreement may be terminated at any time by either party, with or without cause, or for any reason whatsoever, by giving thirty (30) days written notice prior to the effective date of termination. Such notice must be sent certified mail, return receipt requested as required by Article 12 below.

Upon termination, Kyte Consulting LLC shall deliver to the City, within forty-five (45) days, all original documents, tracings, computer files, including electronic data files, and material, except Kyte Consulting personal and administrative files.

Upon termination of this Agreement, the City will retain access to the Kyte Consulting software for any and all City business.

ARTICLE 6
INDEMNIFICATION

Kyte Consulting LLC shall indemnify and hold harmless the City and its elected or appointed officials, directors, officers, employees and agents against any and all losses, claims, lawsuits, or attorney's fee's with respect to its performance or obligations under the Agreement resulting from or arising out of the errors and omissions, torts, intentional torts, dishonest, fraudulent or criminal acts, or gross negligence of the other party, unless such loss, claim, or lawsuit results from the City's negligence.

The City agrees to indemnify and hold harmless Kyte Consulting LLC and its directors, officers, employees and agents against any and all losses, claims, and lawsuits, settlements, judgments, costs, penalties and expenses, including attorney's fees, arising out of the Agreement's performance or responsibilities under the Agreement unless such loss, claims, or lawsuits result from or arises out of the errors and omissions, torts, intentional torts, dishonest, fraudulent or criminal acts, or negligence or gross negligence of Kyte Consulting, its directors, officers, employees or agents.

ARTICLE 7
ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties with respect to the transactions contemplated by this Agreement, and it supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for in this Agreement.

ARTICLE 8

GOVERNING LAW

This Agreement, the rights and obligations of the parties and any claims or disputes relating thereto shall be governed by and construed in accordance with the laws of the State of Louisiana. The parties agree that the venue and jurisdiction for any lawsuit brought concerning this Agreement shall be in the 9th Judicial District, Rapides Parish, Louisiana. Kyte Consulting LLC, by signing this Agreement, waives any plea to lack of jurisdiction or venue.

ARTICLE 9

SEVERABILITY

The invalidity, illegality or unenforceability of any portion of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void.

ARTICLE 10

ASSIGNABILITY

Kyte Consulting LLC shall not have the right to assign any interest in this Agreement to any 3rd party, and shall not transfer any interest without the prior written consent of the City.

ARTICLE 11

INDEPENDENT CONTRACTOR AND NON-EMPLOYMENT

Exclusion of Workman's Compensation Coverage. Kyte Consulting LLC herein expressly agrees and acknowledges that it and its employees are independent contractors as defined in LSA R.S. 23:1020(5) and, as such, it is expressly agreed and understood between the parties that the City shall not be liable to Kyte Consulting LLC or any of its employees, sub-contractors, agents, or contractors for any benefit or coverage provided by the workman's compensation laws of the State of Louisiana.

Waiver of Benefits. It is expressly agreed and understood between the parties entering into this Agreement that neither Kyte Consulting LLC nor any of its employees, sub-contractors, agents, or contractors shall be entitled to receive any sick or annual benefits from the City.

Non-Employment. The City shall not be considered to be the employer of Kyte Consulting LLC nor any of its employees, sub-contractors, agents, or contractors, and Kyte Consulting LLC acknowledges this relationship is one of contract and subject only to the terms and conditions of this Agreement.

ARTICLE 12
NOTICES

All notices, demands, requests, or other communications which may be or are required to be given by any party to any other party pursuant to this Agreement shall be in writing and shall be hand-delivered, mailed by first class, registered or certified mail, return receipt requested, postage prepaid, sent by overnight express mail, postage prepaid, return receipt requested or transmitted by telegram, facsimile, or e-mail addressed as follows:

CITY OF ALEXANDRIA
David Michael Williams
City Attorney
David.williams@cityofalex.com
P.O. Box 71
Alexandria, Louisiana 71309-0071

KYTE CONSULTING, LLC
John Kyte
Principal, Kyte Consulting LLC
John@jkyteconsulting.com
429 Forest Circle
Ruston, LA 71270

SIGNED, before the undersigned competent witnesses and Notary Public in duplicate originals on this ____ day of _____, 2020, at Alexandria, Rapides Parish, Louisiana.

WITNESSES:

CITY OF ALEXANDRIA

Signature

Mayor Jeffery W. Hall

Printed Name

Signature

Printed Name

SIGNED, before the undersigned competent witnesses and Notary Public in duplicate originals on this day of _____, 2020, at _____, _____ Parish, Louisiana.

WITNESSES:

KYTE CONSULTING LLC

Signature

John Kyte, Principal

Printed Name

Signature

Printed Name