

INITIAL FUNDING AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

This Initial Funding Agreement (“Agreement”) is made and entered into and effective _____, 2023 (“Effective Date”), by and between **The Dow Chemical Company** (“Dow”) whose mailing address is 1254 Enclave Parkway, Houston, TX 77077, and **City of League City** (“League City”) whose mailing address is 300 West Walker St., League City, TX 77573 (collectively Dow and League City shall be referred to as the “Parties”). is to memorialize an agreement to perform front end loading evaluations on its existing 8”, 14” and 16” pipelines owned and/or operated by Dow on land in League City, Galveston County, Texas.

Background

WHEREAS, League City is acquisitioning Rights of Ways to construct proposed improvement plans for Landing Boulevard Expansion Project in Galveston County, Texas (“Expansion Project”) along the route shown on Exhibit A: Expansion Project Route, attached and made a part of this Agreement; and

WHEREAS, Dow is the owner and/or operator of three (3) existing pipelines, 8” MB, 14” CR and 16” NA, within easements (“Pipelines”) situated and operating along the Expansion Project Route under right-of-way dated September 29, 1970, and being recorded in Book 2141, Page 142 of the Deed Records in Galveston County, Texas; under easement dated October 11, 1982, identified as Document No. 8303802 being recorded in Galveston and Harris Counties Clerk Offices, specifically tracts of lands referenced in Volumes and Pages shown in agreement as Exhibit A; and under right of way dated July 7, 1970 being recorded in Book 2133 Page 62 in Deed Records in Galveston County, Texas. Pipelines are generally depicted on Exhibit “B”, attached and made a part of this Agreement; and

WHEREAS, League City has requested Dow to perform certain modifications to existing Pipeline(s) along the Expansion Project route; and

WHEREAS, Dow has agreed to perform surveying, engineering, estimating, and other necessary activities (“Work”) to determine the necessary modifications required for its existing Pipeline(s) along the route of the Expansion Project; and

NOW, THEREFORE, for and in consideration of the mutual covenants, obligations, and benefits hereunder, the Parties do hereby agree as follows:

Terms and Conditions

- 1. Work.** Dow will conduct the above-described Work for approximately 90 days and will return its proposed options for schedule and modification needed for its Pipelines.

- 2. Payment.**
 - 2.1 Actual Cost.** League City agrees to bear 100% of the Actual Costs for Dow to accomplish the Work. “Actual Costs” means all direct and indirect costs incurred by Dow related to the Work, including, but not limited to labor, materials, damages, contractor’s fees, overhead, inspection costs, general and administrative costs, taxes, engineering costs, and legal fees relating to the Work. League City recognizes that Dow may use one or more contractors to perform the Work.

 - 2.2 Initial Funding Request.** League City will advance the total amount of the Initial Funding Request prior to the commence of the Work by Dow (“Prepayment”). A check made payable to “The Dow Chemical Company” for the total amount of the Initial Funding Request will be presented by League City to Dow with fully executed Agreement by League City. Should League City check not clear, and the funds therefore not received in Dow’s account, this Agreement shall automatically terminate.

 - 2.3 Final Accounting.** Within 90 days following the completion of the Work, Dow shall provide League City with an accounting of the Actual Cost for Work performed, after applying the Initial Funding Request as a credit, will provide League City an invoice for the balance owed to Dow. League City agrees to pay the full amount of such invoice within (30) days of receipt by League City. If the Actual Costs are less than the Initial Funding Request, a) the remaining Initial Funding Request shall be refunded to Payor within thirty (30) days of completing the final accounting or b) applied and credited to any agreed upon reimbursement agreement between Dow and League City for adjustment(s) of Pipelines needed to accommodate Expansion Project.

- 3. Term and Termination**
 - 3.1 Term.** This Agreement is effective as of the Effective Date written above and will terminate upon completion of the Work contemplated here, and upon Dow being paid in full pursuant to the terms of this Agreement.

 - 3.2 Termination.** League City may terminate the Agreement at any time in its sole discretion. Termination will be effective upon receipt by Dow of 72 hours’ advance written notification from League City. In the event of termination, League City will be responsible for all reasonable and documented costs, charges and expenses incurred by Dow for the Work performed by Dow through the effective date of termination. League City will also be responsible for any additional charges, including reasonable and documented cancellation charges, incurred by Dow prior to the effective time of termination.

4. **Force Majeure.** Dow will not be responsible to League City, or any other entity or persons, for delays, if any, in the commencement or completion of the Work due to acts of God, war, weather or any causes beyond Dow's reasonable control that affects the Pipeline Adjustment.
5. **Regulatory Approvals.** Dow shall obtain and maintain all licenses, permits and approvals if required for its activities under this Agreement.
6. **Indemnification.** Each Party shall indemnify, defend, and hold the other (and its affiliates, respective owners, directors, officers, employees, contractors, agents and successors and assigns) safe and harmless from and against any and all claims, demands, damages, assessments, complaints, causes of action, judgments, fines, settlements, penalties, liabilities and related costs and expenses, including, without limitation, reasonable legal fees and costs, to the extent arising out of, caused by, resulting from, or related to, that Party's action or inaction (or that of its agents, invitees, contractors, and employees upon the Property) under this Agreement or a violation of law (including claims for personal injury, death, property damage, or damage to the environment). This indemnification provision shall be effective to the maximum extent permitted by applicable law and shall survive the termination or expiration of this Agreement.
7. **Assignment.** This Agreement may be assigned in whole or in part subject to written notice to the other party and subject to the assumption by the assignee of all liabilities and obligations of this Agreement.
8. **Successors and Representatives.** This Agreement binds and inures to the benefit of the parties, their respective heirs, executors, administrators, representatives, successors and assignees.
9. **Applicable Law.** Texas law applies to this Agreement without regard for any choice-of-law rules that might direct the application of the law of any other jurisdiction. Any dispute regarding this Agreement will be adjudicated in the United States District Court for the Southern District of Texas or, if that court does not have jurisdiction, in the Judicial District Court for Harris County, Texas.
10. **Notices.** All notices and other communications required or permitted under this Agreement must be in writing and must be sent to the party at that party's address set forth below or at whatever other address the party specifies in writing.

If to League City:

City of League City
300 West Walker St.
Attention: Susan Olyer

If to Dow:

The Dow Chemical Company
PO Box 4286
Houston, TX. 77210-4286
Attention: Manager, Land and Right of Way

Physical Address:
1254 Enclave Parkway
Houston, TX 77077-1607
Attention: Manager, Land and Right of Way

11. **Limitation of Liability.** Other than for gross negligence or willful misconduct, in no event will the parties be liable to each other for consequential, incidental, indirect or punitive damages of any kind including loss of use, loss of profits or a Party's increased operation or production costs, whether or not such damages arise in contract, tort, strict liability or otherwise.
12. **Waiver.** If either party fails to require the other to perform any of the Agreement's terms, that failure does not prevent the party from later enforcing that term. If either party waives the other's breach of a term, that waiver is not treated as waiving a later breach of the term.
13. **Entire Agreement.** This Agreement constitutes the sole agreement of the parties with respect to its subject matter. It supersedes any prior written or oral agreements or communications between the parties. It may not be modified except in a writing signed by the Parties.
14. **Headings.** Headings are for convenience only and do not affect the Agreement's interpretation.
15. **"Including."** Unless the context requires otherwise, the term "including" means "including, but not limited to."
16. **Survival.** Any of the Agreement's terms and conditions which by their nature require performance or observance to occur after termination will survive this Agreement's termination.
17. **Counterparts.** The Agreement may be signed in counterparts, each one of which is considered an original, but all of which constitute one and the same instrument.
18. **No Partnership.** Nothing contained herein shall be considered or construed and the Parties forming or having formed a partnership or joint venture of any kind.

The parties have caused this Agreement to be executed as of the Effective Date.

City of League City

By: _____

Printed Name: _____

Title: _____

Date: _____

The Dow Chemical Company

By: _____

Printed Name: Thomas M. Jackson

Title: Manager, Land & Right of Way

Date: _____

STATE OF TEXAS

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COUNTY OF GALVESTON

On this ____ day of _____, 2023, before me, the undersigned officer, personally appeared _____, _____, _____, known to me or satisfactorily proven to be the person whose name is subscribe to the document, and acknowledged that he/she being authorized to do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I set my hand and official seal.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

On this ____ day of _____, 2023, before me, personally appeared Thomas M. Jackson, Manager of Land & Right of Way of The Dow Chemical Company, known to me or satisfactorily proven to be the person whose name is subscribe to the document, and acknowledged that he/she being authorized to do so, executed the foregoing instrument for the purposes herein contained.

IN WITNESS WHEREOF, I set my hand and official seal.

NOTARY PUBLIC

My Commission Expires:_____

EXHIBIT A

Landing Boulevard Expansion Project Route

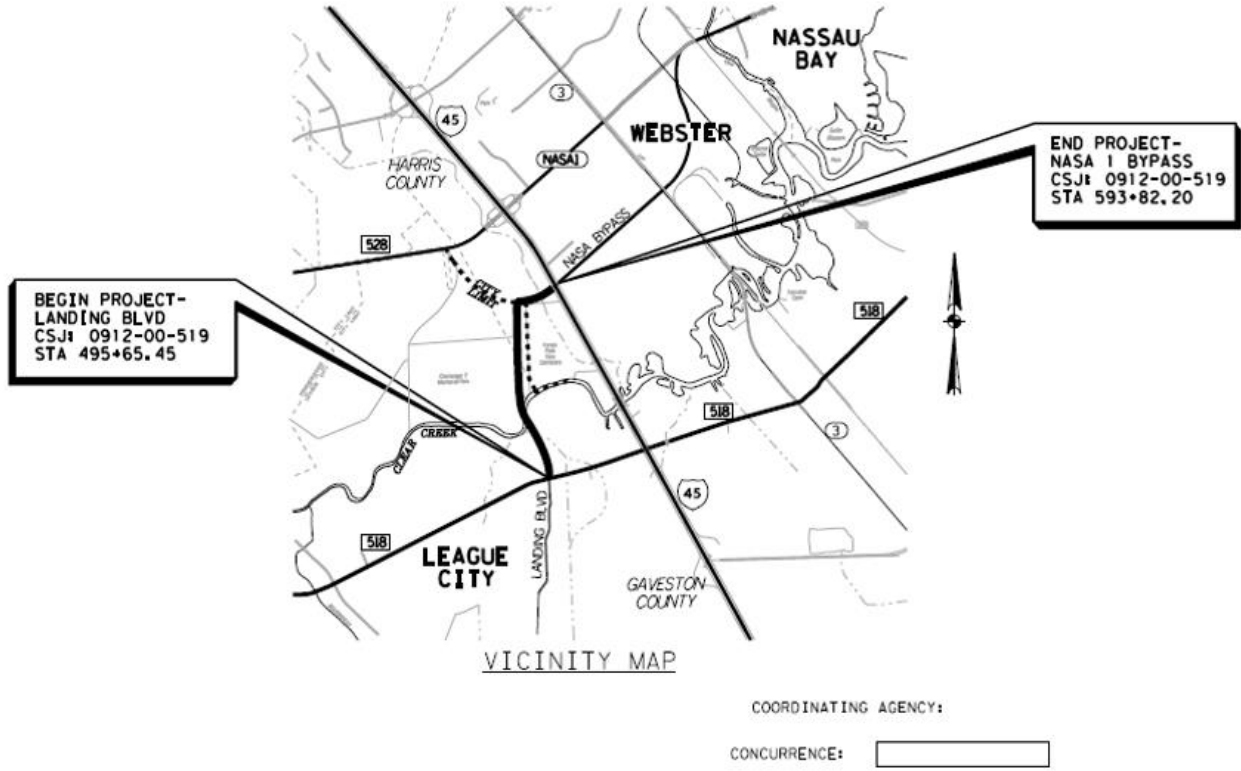


EXHIBIT B

Pipelines for Front End Loading Evaluation

Dow's 8" MB, 14" CR and 16" CR are represented by one fuchsia and two yellow lines in images below.



EXHIBIT B

Pipelines for Front End Loading Evaluation

Continued

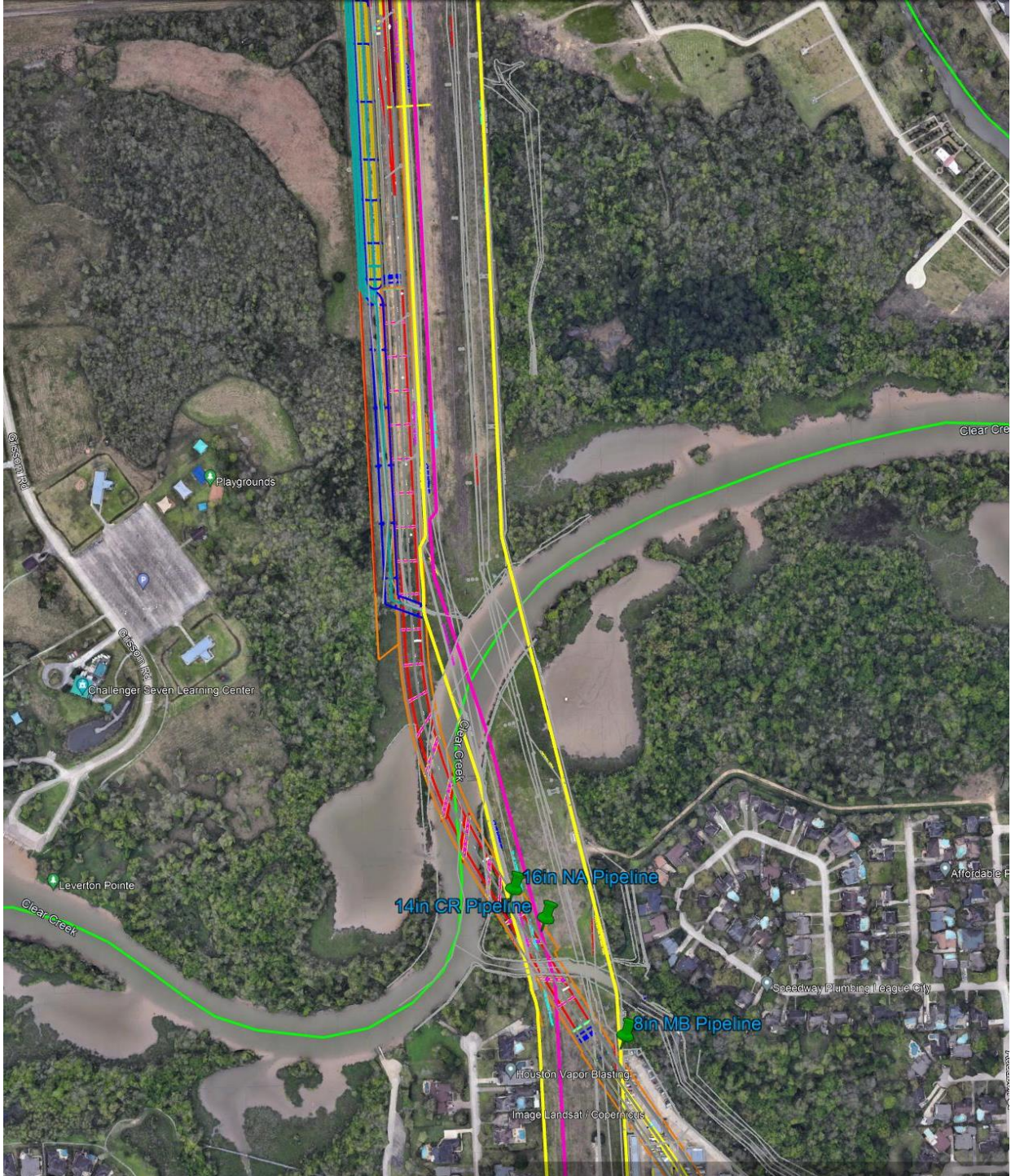


Exhibit C

Initial Funding Request

The Dow Chemical Company Front End Evaluation Cost Estimate	
Contractors Labor & Expense	Cost
- Survey and Engineering	\$ 50,000.00
- Field Inspector	\$ 6,000.00
- Labor	\$ 24,000.00
Company Labor & Expense	
- Labor	\$ 18,000.00
- Expense	\$ 2,000.00
TOTAL	\$ 100,000.00