



PROFESSIONAL SERVICES AGREEMENT

(version 5-1-2020)

This AGREEMENT (“Agreement”) is entered by and between **Kimley-Horn and Associates, Inc.** (“Professional”), located at **11700 Katy Freeway, Suite 800, Houston, TX 77079** 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 **Hurricane Harvey Drainage Repair Project, Phase 2**. Services related to design, bid, or construction of a public work shall conform to the requirements set forth in **Exhibit B**. If there is a conflict between the terms of this Agreement and Exhibits A or B, the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall commence on **July 23, 2020** and shall expire on **November 12, 2021**. 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 **\$156,800.00** 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:** 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, SUBPROFESSIONAL, 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 effected 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:** If applicable, 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 prior to City's acceptance, bearing such loss or damage 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:** 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. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002 of the Texas Government Code, by executing this Agreement Professional verifies that Professional: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
32. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Professional warrants, covenants, and represents that Professional is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152 of the Texas Government Code.

(signature block on next page)

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

KIMLEY-HORN AND ASSOCIATES, INC. - “Professional”



Jeff James, PE – Principal for Kimley-Horn and Associates, Inc.

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
(**24** number of pages, including this page)

See attached documents



July 2, 2020

Mr. Christopher Sims, P.E.
Director of Engineering
City of League City
500 West Walker Street
League City, Texas 77573

RE: *City of League City – Professional Engineering Services for Harvey Drainage Projects*

Dear Mr. Sims,

We are pleased to submit this scope of services and fee schedule to the City of League City to plan, design, assist with permitting, and develop contract documents for Federal Emergency Management Administration (FEMA) funded Harvey Drainage Projects.

We look forward to working with you on this project. If you have any further questions regarding this scope or fee, please don't hesitate to contact me.

Sincerely yours,

A handwritten signature in blue ink that reads "Mike Shelton, P.E." with a stylized flourish at the end.

Mike Shelton, P.E., AICP
Associate / Project Manager

cc: Matthew Brown, P.E., Assistant City Engineer
 Jay Doyle, M.Div., CPM, Senior Project Manager
 Ryan Edghill, Emergency Management Coordinator



**City of League City
Professional Engineering Services for Harvey Drainage Projects**

Kimley-Horn and Associates, Inc. (Kimley-Horn or Professional) is pleased to submit this scope and fee proposal to the City of League City (the Client or the City) for professional engineering services for Harvey Drainage Projects. Our project understanding, scope of services and fees are presented below.

INFORMATION PROVIDED BY CLIENT

The City will provide the following:

1. Record drawings / plats for the sub divisions surrounding the channels in the project area.
2. Access to Galveston County parcel data and GIS shapefiles.
3. Access to League City GIS base data.
4. Relevant drainage studies from contributing basins.
5. FEMA applications.
6. Permission to enter subject properties.
7. Coordination of easement or property acquisition required for the project.
8. Copies of any previous environmental studies, assessments, audits, inspections or activities of any kind at the property known to the Client, existing property owner, existing property operator, past property owners and operators.

Kimley-Horn shall be entitled to rely on the completeness and accuracy of materials supplied by others in the completion of their services under this agreement.

PROJECT UNDERSTANDING

The project consists of professional engineering services to plan, design, and develop contract documents for Federal Emergency Management Administration (FEMA) funded Harvey Drainage Projects. The City, as applicant 167-41980-00, requested funding for seven projects under FEMA disaster recovery program related to Hurricane Harvey (event 4332DR-TX (4332-DR)).

This scope focuses on the design of repairs along the channel called Magnolia Creek (FEMA Project Number 36896). Magnolia Creek is mostly a natural earthen bank channel with low vegetation. The City provided a grant application describing 52 sites where fast rushing storm water from the surrounding area eroded and scoured the channel banks. The specific locations of the sites are included in the FEMA damage description report dated 6/22/2020, damage also occurred where the channel was submerged in flood waters for four or more days.

SCOPE OF SERVICES

TASK 1: 30% DESIGN

Professional will prepare the 30% construction plans based on the FEMA damage description report. These plans will be prepared in AutoCAD format. Professional will prepare construction documents for the improvements proposed in the modeling report. Consultant will rely upon survey completed in a recent previous project on Magnolia Creek. The construction plans are anticipated to include the following sheets (with approximate sheet count):

- Cover Sheet (1 sheet)
- Layout Sheet (1 sheet)
- Dimension Control Plan (10 sheets)
- Channel Plan and Sections (10 sheets) 30% profiles will not include labels or details
- General Construction Details (5 sheets)

Submittal for 30% will not include a project manual or technical specifications.

Prepare the 30% OPCC. The Professional has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. OPCC provided herein are based on the information known to Professional at this time and represent only the Professional's judgment as a design professional familiar with the construction industry. The Professional cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

Professional will submit up to four hard copies and an electronic copy (Adobe PDF Format) of the 30% plans to the City for review. Professional will facilitate one review meeting at Client's offices for review comments on the 30% submittal.

TASK 2: PERMIT APPLICATION ASSISTANCE

Professional will assist the Client with preparation of permit applications required for US Army Corps of Engineers (USACE) permitting.

Kimley-Horn will rely on Aquatic Resources Delineation and Functional Assessment previously prepared by Kimley-Horn for League City within the Magnolia Creek right-of-way. Kimley-Horn will perform field visits to update this information including locating and collecting data with a GPS unit with sub-meter accuracy protected trees within the area of disturbance. Protected trees will be identified based on the City of League City Tree Preservation Ordinance.

USACE Permit Coordination and Application

It appears the proposed project will result in impacts to potentially jurisdictional waters, which would trigger permitting and coordination with the USACE Galveston District. The exact permitting action(s) have not been determined; however, they are anticipated to be determined following the USACE pre-application meeting. Information pertaining to pursuing approval from the USACE in the form of a Nationwide Permit (NWP) provided below. If the proposed design results in impacts above the NWP



threshold, the Consultant can provide the City with assistance with preparation of application for an Individual Permit as additional services.

This scope anticipates preparation of an application for one NWP.

Post-Submittal Agency Coordination

Following submittal of the NWP Applications to the USACE, Professional will coordinate with the USACE, TCEQ, and other regulatory agencies during review of the permit application documents. Professional anticipates the following coordination tasks for each NWP:

- Up to two simultaneous responses to requests for additional information from the USACE and TCEQ.
- Up to two responses to public comments (assuming no more than 30 comments each time).
- Preparation and attendance for up to two review meetings at the request of Client or regulatory agencies.

Professional will make up to two revisions to the application package based upon USACE and TCEQ review comments. Changes to the application package as a result of Client-directed design changes, following the commencement of work under this Agreement this task, will be considered additional services.

Professional assumes up to 80 hours of effort is included in this coordination task. If Professional exceeds this number of hours prior to completing the task, Professional will notify the Client to obtain additional services prior to proceeding with those efforts.

TASK 3: GEOTECHNICAL SUBCONSULTANT

The Professional will engage a geotechnical sub-consultant (Gorron dona) to perform geotechnical investigations for the project. Sub-consultant will rely upon data from previously performed geotechnical bores along Magnolia Creek supplemented with additional bores.

Field Investigation

The proposed geotechnical field investigation includes:

Number of Borings	Depth of Boring (feet)	Location
7	30	Along channel alignments near failed slopes.

Sub-consultant field personnel will drill the borings, obtain cohesive and non-cohesive soil samples with three-inch diameter Shelby tube samplers (ASTM D-1587) and two-inch diameter standard split-spoon samplers (ASTM D-1586), respectively.

An engineering geologist or soils technician will extrude samples in the field, check the samples for consistency with a hand penetrometer, wrap to preserve condition, and return to the laboratory for testing. Sub-consultant will prepare a log of each boring to document field activities and results. Sub-consultant will stake the boring locations using normal taping procedures. Locations will be shown on the boring plan exhibit. At completion of drilling operations, sub-consultant will backfill and plug bore hole with soil cuttings.

Laboratory Investigation

Sub-consultant will perform laboratory tests on bore samples required for classification purposes, to determine strength characteristics, and to evaluate both the short- and long-term deformation and swell properties of the material. Testing, in accordance with standard procedures, will include moisture content, soil identification, liquid and plastic limit determinations, strength tests on soil, and unit weight determinations. The specific types and quantities of tests will be determined based on soil conditions encountered in the borings.

Geotechnical Engineering Report

Analysis will include evaluation of slope stability of various slope configurations. Discussion will include slope stability recommendations to repair failed slopes using various options. A report summarizing the findings, including slope stability analysis and repair recommendations will be provided. The engineering report will be prepared by a registered engineer and will present the results of our analyses and our recommendations. We will provide a digitally signed and sealed report in electronic PDF format.

TASK 4: 60% DESIGN

Professional will revise the 30% plans to prepare the 60% construction plans based on the concept plans, permit responses, and comments received from the City. Professional will prepare construction documents for the improvements proposed in the modeling report. The construction plans are anticipated to include the following sheets (with approximate sheet count):

- Cover Sheet (1 sheet)
- General Notes (1 sheet)
- Layout Sheet (1 sheet)
- Dimension Control Plan (10 sheets)
- Channel Plan and Profile (10 sheets)
- Erosion Control Plan (10 sheets)
- Erosion Control Details (2 sheets)
- General Construction Details (5 sheets)

Professional will prepare a Project Manual consisting of City provided front end procurement documents and technical specifications for materials and construction of the proposed facilities. Unless the Client provides other suitable documents, the Contract Documents will be based upon the Engineers Joint Contract Documents Committee (EJCDC) documents.

Prepare the 60% OPCC.

Professional will submit up to four hard copies and an electronic copy of the 60% plans, project manual, and OPCC to the City for review. Professional will facilitate one review meeting at Client's offices for review comments on the 60% submittal.

TASK 5: 90% DESIGN



Professional will revise the 60% plans to prepare the 90% construction plans based on the concept plans, permit responses, or comments received from the City. Kimley-Horn will prepare a 90% Project Manual and 90% OPCC.

Professional will submit up to four hard copies and an electronic copy of the 90% plans, Project Manual, and OPCC to the City for review. Professional will facilitate one review meeting at Client's offices for review comments on the 90% submittal.

TASK 6: BID PHASE SERVICES

Professional will finalize the project manual/bid document that includes the necessary technical documents and specifications required for bidding. This project manual/bid document will include the construction drawings and specifications suitable for bidding and construction. Final construction documents will be signed and sealed by an engineer licensed in Texas and issued for construction. Professional will compile the final bid document which will consist of drawings, specifications, bid tables and supporting documents for bidding purposes. It is anticipated that the project may be advertised as either one or two bid packages.

The services that are considered part of this task could include:

- Attend one meeting with City Staff to review Bid Documents & Schedules.
- Assist the City in the development of a Bid Schedule.
- Assist the City with uploading files to Civcast for bidding.
- Assist the City in responding to Bidder's questions.
- Attend and participate in Bid Opening.

It is expected that the City will solicit the bids and advertise in the newspaper of record and on the City website. Professional will provide a recommendation letter and bid tabulation. City will select bidder.

TASK 7: CONSTRUCTION PHASE SERVICES

Professional will provide construction phase services specifically stated below, as requested by Client, on an hourly basis. The tasks that will be performed for some of the items below are listed explicitly. It is anticipated that construction period will be 12 months. Professional will provide construction phase services for longer construction duration as additional services.

Recommendations with Respect to Defective Work. Professional will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Professional believes that such work will not produce a completed Project that conforms generally to Contract Documents.

Clarifications and Interpretations. Professional will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to Client as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by Client.

Change Orders. Professional may recommend Change Orders to Client, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

Shop Drawings and Samples. Professional will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

Substitutes and "or-equal." Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.

Inspections and Tests. Professional may require special inspections or tests of Contractor's work as Professional deems appropriate, and may receive and review certificates of inspections within Professional's area of responsibility or of tests and approvals required by laws and regulations or the Contract Documents. Professional's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Professional shall be entitled to rely on the results of such tests and the facts being certified.

Disagreements between Client and Contractor. Professional will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Professional shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

Substantial Completion. Professional will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with Client and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of Client, Professional considers the Work substantially complete, Professional will notify Client and Contractor. Conduct one walkthrough at substantial completion and provide a substantial completion punchlist to Client for completion of the project.

Final Notice of Acceptability of the Work. Professional will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Professional may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Professional shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of Professional's knowledge, information, and belief based on the extent of its services and based upon information provided to Professional upon which it is entitled to rely.

- Perform one (1) Final Completion walk-through.



Record Drawings. Professional will prepare Record Drawings using the marked-up drawings provided by the Contractor and reviewed by Kimley-Horn during field observations. Record drawing information shall be based solely on the provided marked-up drawings and appropriate field documentation received from the Contractor.

Limitation of Responsibilities. Professional shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Professional shall not have the authority or responsibility to stop the work of any Contractor.

Visits to Site and Observation of Construction. Professional will provide on-site construction observation services during the construction phase. Visits and observations by Professional are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Professional's exercise of professional judgment. Based on information obtained during such visits and such observations, Professional will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Professional will keep Client informed of the general progress of the Work.

The purpose of Professional's site visits will be to enable Professional to better carry out the duties and responsibilities specifically assigned in this Agreement to Professional, and to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents. Professional shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Professional have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Professional neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

- Perform Site Visits and Construction Observations during construction. These shall be limited to twelve (12) visits. City will perform all formal site inspections.

Applications for Payment. Based on its observations and on review of applications for payment and accompanying supporting documentation, Professional will provide limited assistance to the City in determining amounts for the Contractor to be paid. This will constitute Professional's representation to the Client, based on such observations and review, that, to the best of Professional's knowledge, information and belief, Contractor's work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents subject to any qualifications stated otherwise. In the case of unit price work, Professional's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests.

By recommending any payment, Professional shall not thereby be deemed to have represented that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's



work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Professional in this Agreement. It will also not impose responsibility on Professional to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, nor to determine that title to any portion of the work in progress, materials, or equipment has passed to Client free and clear of any liens, claims, security interests, or encumbrances, nor that there may not be other matters at issue between Client and Contractor that might affect the amount that should be paid.



FEE AND BILLING

Kimley-Horn will perform the services in Tasks 1 through 7 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the City.

Task 1: 30% Design.....	\$30,100
Task 2: Permit Application Assistance	\$25,100
Task 3: Geotechnical Subconsultant.....	\$41,900
Task 4: 60% Design.....	\$23,400
Task 5: 90% Design.....	\$10,500
Task 6: Bid Phase Services	\$7,900
Task 7: Construction Phase Services	\$18,000
Total Fee	\$156,800

Fees will be invoiced monthly upon the percentage of services completed or actual services performed. Payment will be due within 25 days of the date of the invoice.



SCHEDULE

We will provide our services as expeditiously as practicable with the goal of meeting the attached schedule. Times for performance shall be extended as necessary for delays due to circumstances that Kimley-Horn does not control. Kimley-Horn shall not be liable for or be deemed in breach because of delays caused by any factor outside of its reasonable control.

To comply with section 5 of the attached terms related to time critical items, and based on receiving a notice to proceed from the City on or before July 31, 2020, the Professional will meet the following schedule:

- Submit draft 30% Design deliverables by Thursday October 15, 2020.
- Submit draft NWP permit applications by Thursday October 29, 2020.
- Submit final NWP permit applications within 30 days of receipt of comments on draft.
- Submit draft 60% Design deliverables within 60 days of receipt of comments on 30%.
- Submit draft 90% Design deliverables within 30 days of receipt of comments on 60%.
- Submit final 90% Design deliverables within 30 days of receipt of comments on draft.



Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rates)

Senior Professional I	\$245 - \$275
Senior Professional II	\$190 - \$250
Professional	\$175 - \$210
Analyst	\$120 - \$185
Senior Technical Support	\$115 - \$180
Technical Support	\$70 - \$125
Support Staff.....	\$75 - \$125

Effective through June 30, 2023.

City of League City - Magnolia Creek Harvey Drainage Projects
Kimley-Horn and Associates, Inc.

LEVEL OF EFFORT SUMMARY

Date Prepared: Thursday, July 2, 2020

Kimley-Horn Task Number	Kimley-Horn Task Name Subtask Name/Description	Senior Professional I	Senior Professional III	Senior Professional II	Professional	Analyst	Technical Support	Support Staff	Labor Total	Expenses				Total
		\$263	\$195	\$190	\$175	\$140	\$120	\$90		Sub Fee 6% Mark Up	Mileage Expenses	Plot Expenses	Allocation 4.60%	Rounded Task Total (\$100)
BASE SCOPE LEVEL OF EFFORT														
1	30% DESIGN													
	Construction Plans	4		8	52	104			\$26,232		\$300	\$800	\$1,207	\$ 28,600
	OPCC				8				\$1,400				\$64	\$ 1,500
	Subtotal (Hours)	4	0	8	60	104	0	0						
	Task Total (Dollars)	\$1,052	\$0	\$1,520	\$10,500	\$14,560	\$0	\$0	\$27,632	\$0	\$300	\$800	\$1,271	\$30,100
2	PERMIT APPLICATION ASSISTANCE													
	Field Verification													
	USACE Pre-Application Meeting			8	40	40			\$12,600		\$1,900		\$580	\$ 15,100
	Alternatives Analysis			4	8				\$1,520			\$300	\$70	\$ 1,600
	USACE Permit Coordination and Application		2	4	8	8			\$2,160		\$200	\$169	\$ 2,400	
	Post-Submittal Agency Coordination		2	4					\$1,150			\$400	\$53	\$ 1,700
	Subtotal (Hours)	0	4	20	56	48	0	0						
	Task Total (Dollars)	\$0	\$780	\$3,800	\$9,800	\$6,720	\$0	\$0	\$21,100	\$0	\$1,900	\$900	\$971	\$25,100
3	Geotechnical Subconsultant													
	Geotechnical Bores and Report													
	Subtotal (Hours)	0	0	0	0	0	0	0	\$0	\$41,890			\$0	\$ 41,900
	Task Total (Dollars)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$41,890	\$0	\$0	\$0	\$41,900
4	60% DESIGN													
	Construction Plans	4		8	40	52			\$16,852		\$300	\$1,600	\$775	\$ 19,600
	OPCC			8	12				\$3,620				\$167	\$ 3,800
	Subtotal (Hours)	4	0	16	52	52	0	0						
	Task Total (Dollars)	\$1,052	\$0	\$3,040	\$9,100	\$7,280	\$0	\$0	\$20,472	\$0	\$300	\$1,600	\$942	\$23,400
5	90% DESIGN													
	Construction Plans	2		2	4	40			\$7,206		\$500	\$331	\$ 8,100	
	Project Manual			2	4			4	\$1,440			\$66	\$ 1,600	
	OPCC				4				\$700			\$32	\$ 800	
	Subtotal (Hours)	2	0	4	12	40	0	4						
	Task Total (Dollars)	\$526	\$0	\$760	\$2,100	\$5,600	\$0	\$360	\$9,346	\$0	\$0	\$500	\$430	\$10,500
6	Bid Phase Services													
	Final Project Documents	4	4			9		4	\$3,452			\$900	\$159	\$ 4,600
	Review Meeting		4						\$780		\$100		\$36	\$ 1,000
	Bid Opening		4						\$780		\$100		\$36	\$ 1,000
	Subtotal (Hours)	4	14	0	0	6	0	4	\$1,230			\$57	\$ 1,300	
	Task Total (Dollars)	\$1,052	\$2,730	\$0	\$0	\$2,100	\$0	\$360	\$6,242	\$0	\$200	\$900	\$287	\$7,900
7	Construction Phase Services													
	Construction Administration			12	24			12	\$7,560				\$348	\$ 8,000
	Site Visits				48				\$8,400		\$1,200		\$386	\$ 10,000
	Subtotal (Hours)	0	0	12	72	0	0	12						
	Task Total (Dollars)	\$0	\$0	\$2,280	\$12,600	\$0	\$0	\$1,080	\$15,960	\$0	\$1,200	\$0	\$734	\$18,000
	Total Lump Sum Fee (Dollars)	\$3,682	\$3,510	\$11,400	\$44,100	\$36,260	\$0	\$1,800	\$100,752	\$41,890	\$3,900	\$4,700	\$4,635	\$156,900



Gorrondona
Engineering Services, Inc.

Geotechnical Engineering • Construction Materials Testing & Inspection

June 26, 2020

Mr. Mike Shelton
Kimley-Horn
11700 Katy Freeway, Suite 800
Houston, Texas 77079

Re: GES Proposal No. P20-0425
Geotechnical Investigation
Magnolia Creek Repair
League City, Texas

Dear Mr. Shelton

Gorrondona Engineering Services, Inc. (GES) is pleased to offer this proposal for a geotechnical investigation for the referenced project. We prepared this proposal based on information provided.

Project Location: The project alignment is located along existing Magnolia Bayou between its intersection with South Friendswood Drive and League City Parkway, in League City, Texas. *Based on provided information, we understand there are at least 52 distressed slope locations along approximately 1-Linear mile of Magnolia Bayou.*

Project Description: The project consists of the following:

- Performing slope stability analysis and providing geotechnical recommendations to improve the stability of failed slopes along the Magnolia Bayou using various options.

Assumptions: Our proposal assumes and is based upon the following:

- GES will utilize data gathered during our previous investigations performed by GES (Project 19-0408, dated June 8, 2020). Borings B-24 to 31 were drilled along the alignment of proposed improvement;
- At least up to 7-additional verification borings may be performed;
- **The boring locations can be accessed by a buggy-mounted drilling rig; and**
- The boring locations are not covered by concrete.

Mr. Mike Shelton
GES Proposal No. P20-0425
June 26, 2020
Page 2 of 4

- **The site is readily accessible;**
- **The site DOES NOT require clearing for boring access;**
- **Bayou improvement profiles (height, slope, length, etc.) and survey topographic information will be provided by the client prior to us performing a detailed slope stability analysis.**

FIELD INVESTIGATION

The proposed field investigation includes:

No. of Borings	Depth per Boring (feet)	Location
7	30	Along proposed alignment of failed slopes.

Seven verification borings totaling 210 feet of drilling are included in this scope of work.

Field personnel will drill the borings using the equipment stated in our assumptions. Cohesive and non-cohesive soil samples will be obtained using three-inch diameter Shelby tube samplers (ASTM D-1587) and two-inch diameter standard split-spoon samplers (ASTM D-1586), respectively.

An engineering geologist or soils technician will extrude the samples in the field, check the samples for consistency with a hand penetrometer, carefully wrap them to preserve their condition, and return them to the laboratory for testing. A log of each boring will be prepared to document field activities and results. GES will stake the boring locations using normal taping procedures. Locations will be shown on the plan of borings. Precise surveying of boring locations and elevations is not included in the cost estimate. These services may be provided upon request, at additional cost. At the completion of drilling operations, bore holes will be backfilled and plugged with soil cuttings.

LABORATORY INVESTIGATION

Laboratory tests will be required for classification purposes, to determine strength characteristics, and to evaluate both the short- and long-term deformation/swell properties of the materials encountered. Testing will be in accordance with our standard procedures which include moisture content and soil identification, liquid and plastic limit determinations, strength tests on soil, and unit weight determinations. The specific types and quantities of tests will be determined based on soil conditions encountered in the borings.

Mr. Mike Shelton
GES Proposal No. P20-0425
June 26, 2020
Page 3 of 4

ENGINEERING SERVICES

Analysis will include evaluation of slope stability of various slope configurations. Discussion will include slope stability recommendations to repair failed slopes using various options. A report summarizing the findings, including slope stability analysis and repair recommendations will be provided. The engineering report will be prepared by a registered engineer and will present the results of our analyses and our recommendations. We will provide a digitally signed and sealed report in electronic PDF format.

COST OF SERVICES

Based on the scope of services described above, we propose a lump sum fee of **\$39,519.00** for the geotechnical investigation phase of the project. A detailed cost estimate is attached. This fee will not be exceeded without prior authorization. Items other than those specified above, or changes in drilling requirements, which are revealed by these studies or are necessitated by a change in project scope, may require revised field, laboratory, and engineering services. These services will be discussed and negotiated on an individual basis. The final invoice will be sent to you with our report.

Please sign and return one copy of the proposal where indicated below as your authorization to proceed. By execution of this proposal, the undersigned Client acknowledges and agrees that the document entitled "Terms and Conditions" has been provided or made available to Client and Client agrees that such Terms and Conditions shall be applied to the present Proposal and shall be fully binding upon Client. The Terms and Conditions are fully incorporated into this Proposal by reference as if set forth at length.

Mr. Mike Shelton
GES Proposal No. P20-0425
June 26, 2020
Page 4 of 4

Thank you for the opportunity to present this proposal. Please call if you have any questions or if you have suggestions regarding changes to the agreement or to the proposed work scope. We look forward to working with you on the project.

Respectfully submitted,
Gorrondona Engineering Services, Inc.



Faisal A. Samoo, P.E.
2020.06.26 14:59:21 -05'00'

Faisal A. Samoo, P.E.
Engineering Department Manager

GORRONDONA ENGINEERING SERVICES, INC. - TEXAS ENGINEERING FIRM REGISTRATION NO. F-17076

Attachments: Cost Estimate, Terms and Conditions

PROPOSAL ACCEPTED BY:

Signature

Date

Printed Name

Company

Title

GEOTECHNICAL INVESTIGATION AND ENGINEERING COST ESTIMATE

Prepared by Gorrondona Engineering Services, Inc.

Attachment B: Geotechnical Sub Scope

GES Proposal No.:	P20-0425			
Proposal Date:	June 26, 2020			
Project:	Magnolia Creek Repair			
Location:	League City, Texas			
PLANNING (One Call, Drilling Package/Scheduling, Permits, Internal Project Kick-off Meeting)				
Item	Unit Rate	Unit	Quantity	Cost
Director/Principal Engineer	\$270.00	Hour		1,080.00
Area Manager/Principal Engineer	\$190.00	Hour		
Engineering/CMT Manager	\$170.00	Hour		
Senior Project Engineer	\$180.00	Hour		1,440.00
Project Engineer	\$122.00	Hour		976.00
Staff/Field Engineer	\$100.00	Hour		
Administrative	\$60.00	Hour		
Lane Closure Permit	\$700.00	LS		
			Planning Subtotal:	3,496.00
FIELD (Borings, Corings, Piezometers)				
Item	Unit Rate	Unit	Quantity	Cost
Vehicle (Pickup Truck)	\$55.00	Trip		330.00
Field Soil Technician	\$70.00	Hour	20	1,400.00
Project Engineer	\$122.00	Hour		
Senior Project Engineer	\$145.00	Hour		
Labor Per Diem	\$170.00	Day		
Traffic Control	\$1,500.00	Day		
Concrete Coring Setup	\$100.00	LS		
Concrete Coring	\$70.00	Hour		
Truck Drilling Rig Mobilization	\$4.50	Mile		
Truck Standard Drilling (0-50 ft) - Soil	\$14.00	Foot		
Truck Standard Drilling (51-100 ft) - Soil	\$16.00	Foot		
Truck TxDOT Drilling (0-50 ft) - Soil	\$17.00	Foot		
Truck TxDOT Drilling (51-100 ft) - Soil	\$19.00	Foot		
ATV Drilling Rig Mobilization	\$1,000.00	LS		1,000.00
ATV Standard Drilling (0-50 ft) - Soil	\$16.00	Foot	210	3,360.00
ATV Standard Drilling (51-100 ft) - Soil	\$18.00	Foot		
ATV TxDOT Drilling (0-50 ft) - Soil	\$19.00	Foot		
ATV TxDOT Drilling (51-100 ft) - Soil	\$21.00	Foot		
Rock Coring Set Up	\$100.00	Hole		
Drilling - Soft Rock	\$20.00	Foot		
Driling - Hard Rock	\$30.00	Foot		
Drill Crew Per Diem	\$350.00	Day		
Hand Auger Equipment Charge	\$50.00	Day		
Photoionization Detector	\$100.00	Day		
TCP Tests	\$25.00	Each		
Piezometer (in existing boring)	\$14.00	Foot		
Borehole Grouting	\$6.00	Foot		
Sample Shipping	\$50.00	LS		
Steam Cleaner	\$350.00	Day		
Field Supplies	\$20.00	LS		
			Field Subtotal:	6,090.00
LABORATORY (Classification, Strength, Consolidation/Swell Potential)				
Item	Unit Rate	Unit	Quantity	Cost
Senior Project Engineer (Lab Assignments)	\$180.00	Hour		180.00
Project Engineer (Lab Assignments)	\$122.00	Hour		
Moisture Content / Classification	\$6.00	Each	32	192.00
Atterberg Limits	\$30.00	Each	21	630.00
- No. 200 Sieve	\$30.00	Each	21	630.00
Soil Unit Weight	\$10.00	Each		
Unconfined Compression	\$25.00	Each		
UU Triaxial	\$40.00	Each	14	560.00
Swell	\$25.00	Each		
CBR	\$200.00	Each		
Crumb Test	\$33.00	Each		231.00
Double Hydrometer	\$150.00	Each		1,050.00
Sulfates	\$40.00	Each		
Other Chemical Analysis	\$0.00	LS		
			Laboratory Subtotal:	3,473.00
BORING LOG PREPARATION				
Item	Unit Rate	Unit	Quantity	Cost
Director/Principal Engineer	\$270.00	Hour		
Area Manager/Principal Manager	\$190.00	Hour		
Engineering/CMT Manager	\$185.00	Hour		
Senior Project Engineer	\$180.00	Hour		
Project Engineer	\$122.00	Hour		
Staff Engineer	\$94.00	Hour		
Administrative	\$51.00	Hour		
			Boring Log Preparation Subtotal:	
ANALYSIS AND REPORT				
Item	Unit Rate	Unit	Quantity	Cost
Director/Principal Engineer	\$270.00	Hour	20	5,400.00
Area Manager/Principal Engineer	\$190.00	Hour		
Engineering/CMT Manager	\$185.00	Hour		
Senior Project Engineer	\$180.00	Hour	56	10,080.00
Project Engineer	\$122.00	Hour	90	10,980.00
Staff Engineer	\$100.00	Hour		
Administrative	\$60.00	Hour		
Overnight Shipping (for Hard Copies)	\$40.00	LS		
Report Supplies (for Hard Copies)	\$20.00	LS		
			Analysis and Report Subtotal:	26,460.00
			PROJECT TOTAL:	39,519.00

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Estimate Notes: Seven borings at 30-feet are included in the scope of work, toaling 210-feet. Estimate is valid for 90 days from the proposal date shown above.

Estimate Notes: Seven borings at 30-feet are included in the scope of work, totaling 210-feet. Estimate is valid for 90 days from the proposal date shown above.

SECTION 1: PARTIES AND SCOPE OF WORK: Gorrondona Engineering Services, Inc. (hereinafter referred to as "GES") shall include said company or its particular division, assigns, successors, subsidiary or affiliate performing the work. "Work" (whether such term is capitalized or not) means the specific geotechnical, analytical, testing or other service to be performed by GES as set forth in GES's proposal and these Terms and Conditions. Additional work ordered by Client shall also be subject to these Terms and Conditions. "Client" refers to the person or business entity ordering the work to be done by GES. If Client is ordering the work on behalf of another, Client represents and warrants that it is the duly authorized agent of said party for the purpose of ordering and directing said work. Unless otherwise stated in writing, Client assumes sole responsibility for determining whether the quantity and the nature of the work ordered by the client is adequate and sufficient for Client's intended purpose. Client shall communicate these Terms and Conditions to each and every third party to whom Client transmits any part of GES's work. GES shall have no duty or obligation to any third party greater than that set forth in GES's proposal, Client's acceptance thereof and these Terms and Conditions. The ordering of work from GES, or the reliance on any of GES's work, shall constitute acceptance of the terms of GES's proposal and these Terms and Conditions, regardless of the terms of any subsequently issued document. If unexpected site conditions are discovered, the scope of work may require additional services even as the work is in progress. GES will provide these additional services at its normal schedule rate. Initiation of services by GES for client will automatically invoke and be performed subject to these Terms and Conditions. GES's duties and obligations for any Work performed is to Client only. If Client chooses to charge any third party for any work performed hereunder, Client is solely responsible for assessing such charges against said third parties. GES assumes no duty or obligation to pursue such charges against any third party other than Client and Client remains solely responsible to GES, regardless of the reimbursable or non-reimbursable status of the charges.

SECTION 2: ACCESS TO SITE: Client will arrange and provide such access to the site as is necessary for GES to perform the work. GES shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as the result of its work or the use of its equipment; however, GES has not included in its fee the cost of restoration of damage which may occur and shall have no obligation to perform any such restoration work. If Client desires or requires GES to restore the site to its former condition, upon written request GES will perform such additional work as is necessary to do so and Client agrees to pay to GES for the cost.

SECTION 3: TEST AND INSPECTIONS: Client shall cause all tests and inspections of the site, materials and work performed others to be timely and properly performed in accordance with the plans, specifications and contract documents and GES's recommendations. Any re-testing, if deemed necessary by GES, or testing due to cancellation of scheduled tests not due to the fault of GES, are outside the scope of work hereunder and will be provided to Client for an additional charge at GES's normal rates. No claims for loss, damage or injury shall be brought against GES by Client or any third party unless all tests and inspections have been so performed and unless GES's recommendations have been exactly followed. Client agrees to indemnify, defend and hold GES, its officers, employees and agents harmless from any and all claims, suits, losses, costs and expenses, including, but not limited to, court costs and reasonable attorney's fees in the event that all such tests and inspections are not so performed or GES's recommendations are not so followed.

SECTION 4: CLIENT'S DUTY TO NOTIFY ENGINEER: Client represents and warrants that it has advised GES of any known or suspected hazardous materials, utility lines and pollutants at any site at which GES is to do work hereunder, and unless GES has specifically assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save GES harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees, incurred as a result of personal injury, death or property damage resulting to or caused by contact with subsurface or latent objects, structures, lines or conduits where the actual or potential presence and location thereof were not specifically revealed to GES by Client.

SECTION 5: RESPONSIBILITY: GES's work shall not include determining, supervising or implementing the means, methods, techniques, sequences or procedures of construction. GES shall not be responsible for evaluating, reporting or affecting job conditions concerning health, safety or welfare. GES's work or failure to perform same shall not in any way excuse any contractor, subcontractor, laborer or supplier from performance of its work in accordance with the contract documents. GES has no right or duty to stop any contractor's work.

SECTION 6: SAMPLE DISPOSAL: Unless otherwise agreed in writing, test specimens or samples will be disposed immediately upon completion of the test. All drilling samples or specimens will be disposed sixty (60) days after submission of GES's report to Client.

SECTION 7: PAYMENT: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause in writing within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law), until paid. Client agrees to pay GES's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and attorney's fees. GES shall not be bound by any provision or agreement requiring or providing for arbitration of disputes or controversies arising out of this agreement, any provision wherein GES waives any rights to a mechanics' lien, or any provision conditioning GES's right to receive payment for its work upon payment to Client by any third party. These Terms and Conditions are notice, where required, that GES intends to file a lien to collect past due amounts. Client agrees to provide GES, upon request, all information necessary for GES to file its lien, including, but not limited to, a legal description of the property upon which the work was performed. Failure to make payment within 30 days of invoice shall constitute an irrevocable final release of GES from any and all claims which Client may have, whether in tort, contract or otherwise, and whether known or unknown at the time.

SECTION 8: WARRANTY: GES'S SERVICES WILL BE PERFORMED, ITS FINDINGS OBTAINED AND ITS REPORTS PREPARED IN ACCORDANCE WITH ITS PROPOSAL AND THESE TERMS AND CONDITIONS, AND WITH GENERALLY ACCEPTED PRINCIPLES AND PRACTICES. IN PERFORMING ITS SERVICES, GES WILL USE THAT DEGREE OF CARE AND SKILL ORDINARILY EXERCISED UNDER SIMILAR CIRCUMSTANCES BY MEMBERS OF ITS PROFESSION. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED. STATEMENTS MADE IN GES REPORTS ARE OPINIONS BASED UPON ENGINEERING JUDGMENT AND ARE NOT TO BE CONSTRUED AS REPRESENTATIONS OF FACT.

SHOULD GES OR ANY OF ITS EMPLOYEES BE FOUND TO HAVE BEEN NEGLIGENT IN THE PERFORMANCE OF ITS WORK, OR TO HAVE MADE AND BREACHED ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION OR CONTRACT, CLIENT, ALL PARTIES CLAIMING THROUGH CLIENT, AND ALL PARTIES CLAIMING TO HAVE IN ANY WAY RELIED UPON GES'S WORK, AGREE THAT THE MAXIMUM AGGREGATE AMOUNT OF THE LIABILITY OF GES, IT'S OFFICERS, EMPLOYEES AND AGENTS SHALL BE LIMITED TO \$25,000.00 OR THE TOTAL AMOUNT OF THE FEE PAID TO GES FOR ITS WORK PERFORMED WITH RESPECT TO THE PROJECT, WHICHEVER AMOUNT IS GREATER.

IN THE EVENT CLIENT IS UNWILLING OR UNABLE TO LIMIT GES'S LIABILITY IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN THIS PARAGRAPH, CLIENT MAY, UPON WRITTEN REQUEST FROM CLIENT RECEIVED WITHIN FIVE DAYS OF CLIENT'S ACCEPTANCE HEREOF, INCREASE THE LIMIT OF GES'S LIABILITY TO \$250,000.00 BY AGREEING TO PAY GES A SUM EQUIVALENT TO AN ADDITIONAL AMOUNT OF 10% OF THE TOTAL FEE TO BE CHARGED FOR GES'S SERVICES. THIS CHARGE IS NOT TO BE CONSTRUED AS BEING A CHARGE FOR INSURANCE OF ANY TYPE, BUT IS INCREASED CONSIDERATION FOR THE GREATER LIABILITY ACCEPTED BY GES. IN ANY EVENT, ATTORNEY'S FEES EXPENDED BY GES IN CONNECTION WITH ANY CLAIM SHALL REDUCE THE AMOUNT AVAILABLE, AND ONLY ONE SUCH AMOUNT WILL APPLY TO ANY PROJECT REGARDLESS OF THE NUMBER OF CLAIMS OR CAUSES OF ACTION ARISING OUT OF THE WORK. CLIENT WAIVES ANY AND ALL CLAIMS FOR CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES AGAINST GES ARISING OUT OF OR RELATING TO THE WORK.

NO ACTION OR CLAIM, WHETHER IN TORT, CONTRACT, OR OTHERWISE, MAY BE BROUGHT AGAINST GES, ARISING FROM OR RELATED TO GES'S WORK, MORE THAN TWO YEARS AND ONE DAY AFTER THE CESSATION OF GES'S WORK HEREUNDER. LIMITATIONS ON LIABILITY AND INDEMNITIES IN THIS AGREEMENT ARE BUSINESS UNDERSTANDINGS BETWEEN THE PARTIES VOLUNTARILY AND KNOWINGLY ENTERED INTO, AND SHALL APPLY TO ALL THEORIES OF RECOVERY INCLUDING, BUT NOT LIMITED TO BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT OR STATUTORY LIABILITY, OR ANY OTHER CAUSE OF ACTION, EXCEPT FOR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. THE PARTIES ALSO AGREE THAT CLIENT WILL NOT SEEK DAMAGES IN EXCESS OF THE LIMITATIONS INDIRECTLY THROUGH SUITS WITH OTHER PARTIES WHO MAY JOIN GES AS A THIRD-PARTY DEFENDANT. PARTIES MEANS CLIENT AND GEOTECHNICAL ENGINEER AND THEIR OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, AND SUBCONTRACTORS.

SECTION 9: HAZARDOUS MATERIALS: During the performance of this agreement shall be construed and interpreted as requiring GES to assume the status of an owner, operator, generator, storer, transporter, creator, or disposal facility as those terms appear within RCRA or within any Federal or State statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants. Client assumes full responsibility for compliance with the provisions of RCRA and any other Federal or State statute or regulation governing the handling, treatment, storage and disposal of pollutants. It shall be the duty of the owner, the client, or their representative to advise GES of any known or suspected hazardous substances which are or may be related to the services provided; such hazardous substances include but are not limited to products, materials, by-products, wastes or samples of the foregoing which GES may be provided or obtain performing its Work or which hazardous substances exist or may exist on or near any premises upon which work is to be performed by GES employees, agents or subcontractors. If GES observes or suspects the existence of unanticipated hazardous materials during the course of its Work, GES may at its option terminate further work on the project and notify Client of the condition. Work will be resumed only after a renegotiation of scope of services and fees. GES does not create, generate or at any time own or take possession or ownership of or arrange for transport, disposal or treatment of hazardous materials as a result of its Work.

SECTION 10: HAZARDOUS MATERIALS INDEMNITY: The Client acknowledges that GES has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the site. Accordingly, except as expressly provided in this contract, the Client waives any claim against GES and agrees to indemnify and save GES, its agents, and employees harmless from any claim, liability or defense cost, including but not limited to attorney fees and other incidental costs, for injury or loss sustained by any party from such exposures, regardless of whether such exposure was allegedly arising out of or related to GES's performance of services hereunder.

SECTION 11: TERMINATION: This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, GES shall be paid for services performed to the termination notice date plus reasonable termination expenses. Expenses of termination or suspension shall include all direct costs of GES required to complete analyses and records necessary to complete its files and may also include a report on the services performed to the date of notice of termination or suspension.

SECTION 12: PROVISIONS SEVERABLE: The parties have entered into this agreement in good faith, and it is the specific intent of the parties that the terms of these Terms and Conditions be enforced as written. In the event any of the provisions of these Terms and Conditions should be found to be unenforceable, it shall be stricken and the remaining provisions shall be enforceable.

SECTION 13: ENTIRE AGREEMENT: These Terms and Conditions and GES's proposal constitute the entire understanding of the parties, and there are no representations, warranties or undertakings made other than as set forth herein. This agreement may be amended, modified or terminated only in writing, signed by each of the parties hereto.

SECTION 14: OWNERSHIP OF DOCUMENTS: All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by GES as instruments of service, shall remain the property of GES unless there are other written agreements to the contrary.

SECTION 15: ASSIGNS: Client may not delegate, assign, subcontract or transfer its duties (including payment) or interest in this agreement without the written consent of GES.

SECTION 16: INDEMNIFICATION: To the fullest extent permitted by applicable law, Client expressly agrees to defend (at Client's expense and with counsel acceptable to GES), indemnify, and save and hold harmless GES and all of its officers, directors, shareholders, employees, agents, successors, predecessors and assigns, from and against any and all claims, suits, losses, causes of action, damages, liabilities, and expenses of any kind whatsoever, including without limitation, all expenses of litigation and arbitration, court costs, and attorney's fees, arising on account of or in connection with injuries to or the death of any person whomsoever, claims for damages from any third party, or any and all damages to property (including the loss of use thereof), regardless of possession or ownership, which injuries, death or damages arise from, or are in any manner connected with, or alleged to be connected with, the Client's property or work being performed on Client's property by GES or by persons or entities other than GES,

or are caused in whole or part by reason of the acts or omissions or presence of the person or property of the Client, its agents, subcontractors, or suppliers, INCLUDING, WITHOUT LIMITATION, INJURIES, DEATH, OR DAMAGES WHICH ARISE FROM OR IN CONNECTION WITH, OR ARE CAUSED BY, ANY ACT, ERROR, OMISSION, OR NEGLIGENCE OF GES AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, CLIENTS, OR SUPPLIERS; BUT EXCLUDING INJURIES, DEATH, OR DAMAGES CAUSED BY THE SOLE NEGLIGENCE OR WANTON AND WILLFUL MISCONDUCT OF GES. The indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Client under worker's or workman's compensation acts, disability benefit acts or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the Client or of any third party to whom Client may subcontract any work.

SECTION 17: COSTS AND TENDERING OF INDEMNIFICATION DEFENSE: The indemnities agreed to by Client herein expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation or arbitration whether or not the claims made for loss, injury, damage or property damage are valid or groundless, and regardless of whether the defense of GES is maintained by GES or assumed by Client. GES in its sole discretion and at its sole option may defend any or all of the indemnified claims or tender to Client the defense of any or all of the indemnified claims. Upon such tender by GES to Client, Client shall be bound and obligated to assume the defense of GES in the indemnified claims, including the settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards or expenses resulting from or arising out of the indemnified claims without reimbursement from GES. It is understood and agreed by Client that if GES tenders the defense of an indemnified claim to Client and Client fails or neglects to assume the defense thereof, GES may compromise and settle or defend any such suit or action, and Client shall be bound and obligated to reimburse GES for the amount expended by it in settling or compromising any such claim, or in the amount expended by GES in paying any judgment rendered therein, together with all reasonable attorneys' fees and cost of litigation incurred by GES by reason of its defense, settlement or compromise of such indemnified claims.

SECTION 18: COLLECTION OF AMOUNTS OWED TO GES: In the event that Client owes any amount to GES, whether under this Agreement or otherwise, Client agrees to GES's employment of whatever collection methods it deems reasonable and expedient, including but not limited to garnishment (pre and post judgment), sequestration, attachment or any other legal method. Client agrees to waive any and all bond requirements associated therewith. Client agrees to pay all costs of collection, including attorney's fees.

SECTION 19: NOTICE: All notices required under this Agreement shall be sent via certified mail return receipt requested to the address set forth in the proposal, via facsimile number listed on the proposal or via hand delivery to the office set forth on the proposal. Verbal notification to GES will not satisfy the notice requirements herein. To the extent any notice provision of these Terms and Conditions violates applicable law in that it is too strict or restrictive, the provision shall be automatically modified to the standards mandated by the applicable law and shall not be void.

City of League City – Magnolia Creek Harvey Drainage Projects
Proposed Project Schedule

	2020				2021				2022				2023				2024			
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4		
Notice To Proceed: Before July 31, 2020																				
Geotechnical Subconsultant																				
Geotechnical Bores and Report																				
USACE Permitting																				
Field Verification																				
USACE Permit Coordination and Application																				
Design																				
30% Plans																				
60% Plans																				
90% Plans and Project Manual																				
Construction Documents																				
Issue Final Plans & Project Manual																				
Bid Phase																				
Advertisement																				
Pre-Bid Meeting																				
Bid Opening																				
Contract Execution																				
Construction																				
Pre Construction Meeting																				
Drainage Improvements																				
Substantial Completion Punch List																				
Final Completion																				

City of League City, Texas
Magnolia Creek Harvey Drainage Projects



Project Information: **Jul. 02, 2020**

Name: Magnolia Creek Harvey Drainage Projects

Opinion of Probable Construction Cost					
Item No.	Item Description	Quantity	Unit	Unit Price	Item Cost
1	Mobilization (5%)	1	LS	\$ 38,950	\$ 38,950
2	Regrade and Address Slopes	4,700.0	LF	\$ 75	\$ 352,500
3	Pressure Grout Void Between Box Culverts	1.0	LS	\$ 31,250	\$ 31,250
4	Coffer Dam	3.0	EA	\$ 12,500	\$ 37,500
5	5-inch thick Concrete Slope Paving	2,000.0	SY	\$ 105	\$ 210,000
6	Remove Existing Corrugated Metal Pipe	300.0	LF	\$ 25	\$ 7,500
7	24-diameter RCP pipe	300.0	LF	\$ 150	\$ 45,000
8	Remove and Replace Guard Rail	2.0	LS	\$ 15,625	\$ 31,250
9	Remove and Replace 6-inch Thick Concrete Sidewalk	1,600.0	SY	\$ 10	\$ 16,000
10	Ditch Excavation, Complete in Place	200.0	CY	\$ 20	\$ 4,000
11	Select Fill to reestablish slopes, Complete in Place	700.0	CY	\$ 30	\$ 21,000
12	Solid Sodding	1,300.0	CY	\$ 10	\$ 13,000
13	Cut Existing CMP to match Concrete Slope Paving	4.0	EA	\$ 2,500	\$ 10,000
Subtotal:					\$ 818,000
Construction Contingency:				30%	\$ 245,400
Construction Cost TOTAL:					\$ 1,063,400

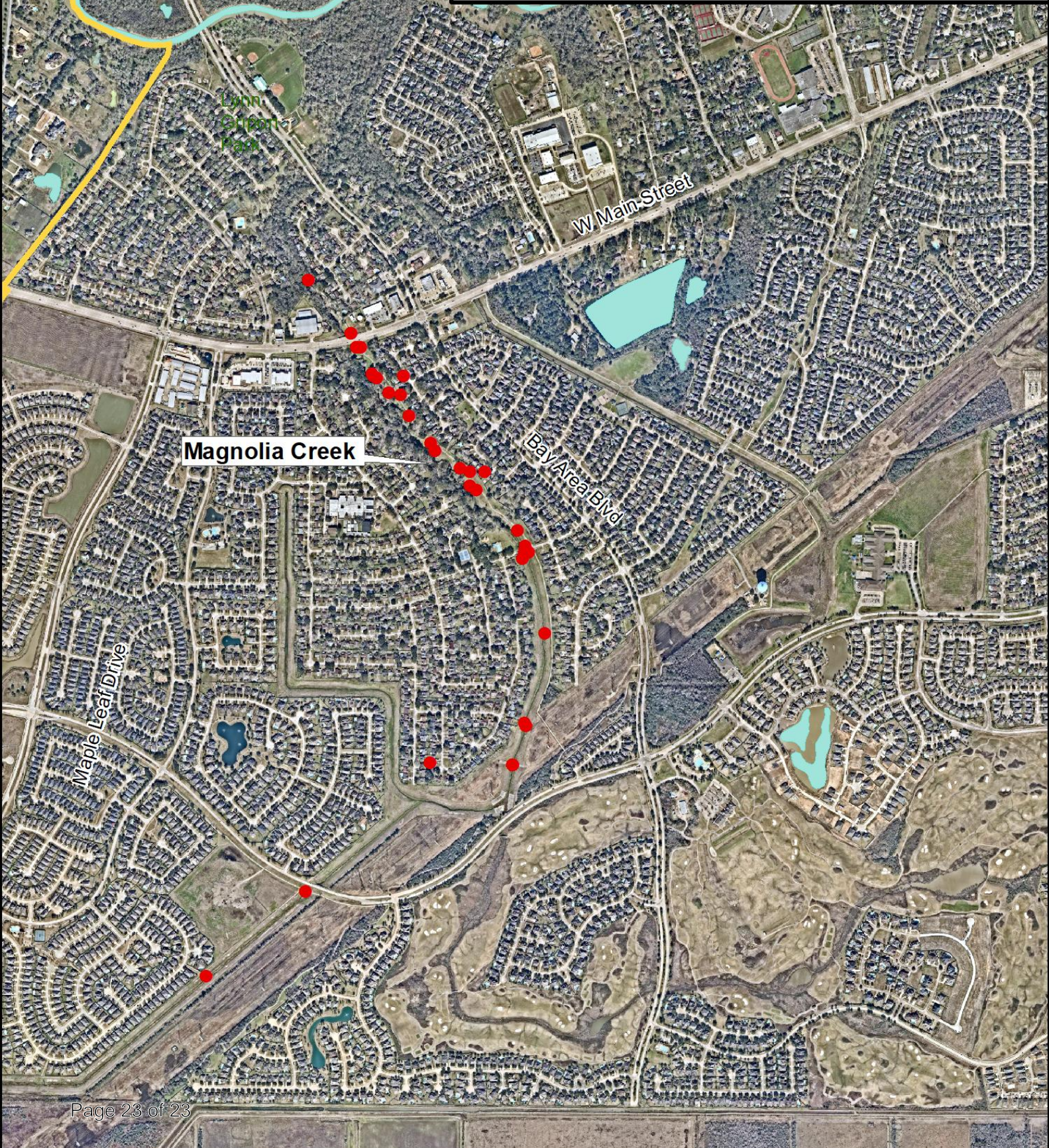
Assumptions / Notes:

1. This Opinion of Probable Construction Cost (OPCC) is not based on design.
2. This OPCC is based on pricing from FEMA application and engineering judgment. Inflation is not accounted for.
3. This OPCC is not intended to serve as a comprehensive and complete analysis of development and construction costs.
4. Any items not specifically noted in this OPCC shall be added by the Client.
5. Construction management and SWPPP inspection fees are not included.
6. This OPCC does not include landscaping other than vegetation removal.
7. This estimate does not include environmental reports or wetlands determinations.
8. This estimate does not include capacity improvements to existing channel crossings (bridges, etc...).
9. Kimley-Horn and Associates, Inc. has no control over the cost of labor, materials, equipment, or services furnished by others, or over methods of determining price, or over competitive bidding, or market conditions. Any and all professional opinions as to costs reflected herein, including but not limited to professional opinions as to the costs of construction materials, are made on the basis of professional experience and available data. Kimley-Horn and Associates, Inc. cannot and does not guarantee or warrant that proposals, bids, or actual costs will not vary from the professional opinions of costs shown herein.

Magnolia Creek Harvey Drainage Projects



Geospatial of map data maintained by the City of League City is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and only represents the approximate location of the property boundaries.



PSA Exhibit B

PHASE REQUIREMENTS

I. Design Phase Services are considered "Time Critical" and subject to Liquidated Damages as outlined in Item 5 of the Professional Services Agreement. This phase must conform to the following submittal types and requirements:

A. 30% Submittals should, at a minimum, include the following:

1. Plans that contain the following information:
 - a. Cover Sheet
 - b. Field Survey Plan Sheet
 - c. Design Plan Sheets that show Existing Conditions and proposed concepts with the existing and proposed work clearly identified
 - d. Demo Plan
 - e. Typical Cross-Sections
2. List of preliminary Utility Conflicts and contact information for appropriate utilities.
3. Updated Design Schedule
4. Preliminary Opinion of Probable Costs (OPCC)
5. Permitting recommendations/requirements
6. Traffic Impact Analysis (if needed)
7. Draft H&H Study and/or Preliminary Engineering Report (if needed)
8. Preliminary Land Acquisition Information (if needed)
9. Preliminary Geotechnical findings (if needed)
10. Preparation of Exhibits and attendance at Public Meeting (if needed)

B. 60% Submittals should, at a minimum, include the following:

1. Plans that contain the following information:
 - a. Cover Sheet w/ index
 - b. General Notes
 - c. Sheet Layout
 - d. Typical Cross-Sections
 - e. Survey Control
 - f. Demo Plan
 - g. Grading Plan (if needed)
 - h. Tree Protection and/or Landscape Plan (if needed)
 - i. Traffic Control Plan (if needed)
 - j. Proposed Drainage Area Map and calculations
 - k. Plan and Profile drawings with Station Numbers for Water, Sewer, Storm, Street
 - l. Intersection Details
 - m. Sidewalks, Traffic Signage, & Pavement Marking Plans
 - n. SW3P Plan Sheet(s) and Details
 - o. Standard CoLC Details applicable for project
 - p. Project Specific Requirements/Details/Notes such as
 - 1) Electrical Plans/Details
 - 2) Structural Plans/Details
 - 3) Signal Plans/Details
2. Final ROW Documents for Land Acquisition (if needed)
3. Completed Geotechnical Report (if needed)
4. List of Updated Utility Conflicts and contact information for appropriate utilities.

5. List of needed Permits, draft applications for needed Permits
6. List of Technical Specifications that are needed for Project
7. Updated Design Schedule
8. Preliminary Construction Schedule
9. Updated Preliminary OPCC
10. Preparation of Exhibits and attendance at Public Meeting (if needed)

C. 90% Submittals should, at a minimum, include the following:

1. Updated Design Plans noted above
2. Submittal Letter addressing previous comments made on 60% Review
3. Project Manual – Spec Book, Bid forms, etc.
4. SW3P Manual with appropriate documentations/signatures as applicable
5. Updated OPCC
6. Approved Permits
7. Final List of Utility Conflicts and contact information for appropriate utilities.

D. Resubmittals

1. Phase submittals that do not comply with the requirements set forth above may be rejected in the sole absolute discretion of City. Rejected submittals must be resubmitted for review after all comments have been addressed.
2. Professional will have \$400 deducted from its Compensation for each review by City of a phase submittal after two prior reviews for that same phase.

II. Bid Phase Services should, at a minimum, include the following:

- A. 100% Construction Plans submitted for final City signatures (a Digital Copy w/ signed cover sheet to be submitted prior to posting for bids).
- B. Completed Project Manual
- C. Completed SW3P Manual
- D. Final OPCC
- E. Updated Construction Schedule
- F. Preparation of Exhibits and attendance at Public Meeting (if needed)
- G. Assist with the advertisement of the project (if needed)
- H. Address any RFI during Bid process (if needed)
- I. Attend and Assist in running a Pre-Bid Meeting (if needed)
- J. Provide Addendums to Bid Documents (if needed)
- K. Once Bids are opened, prepare Bid Evaluation, check references, and provide recommendation of award to City

III. Construction Phase Services should, at a minimum, include the following:

- A. Preparation of Exhibits and attendance at Public Meeting (if needed) prior to Project Start
- B. Attendance at Construction Progress Meetings (if needed)
- C. Periodic Site Visits (minimum 1 visit per month of construction)
- D. Review, Track, and make recommendations related to RFIS, Material Submittals, Change Orders, etc.
- E. Address found Design Conflicts in the Field
- F. Provide paper & digital copies of As-Builts