



PROFESSIONAL SERVICES AGREEMENT

(Version 9-22-2023)

This AGREEMENT (“Agreement”) is entered by and between **Birkhoff, Hendricks & Carter, L.L.P** (the “Professional”), located at **11910 Greenville Ave., Suite 600 Dallas, Texas 75243** 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 **the Beacon Island/Harbor Island Back Feed 12-inch Waterline Project**. Services related to design, bid, or construction of a public work shall conform to the requirements set forth in **Exhibit B**, if applicable. If there is a conflict between the terms of this Agreement and Exhibits A (or B, if applicable), the terms of this Agreement will prevail.
- 2. Term and Termination:** This Agreement shall commence on **May 19, 2025** and shall expire on **September 30, 2026** 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 **\$203,584** 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:** Liquidated damages **are** applicable to this transaction. 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, SUBCONTRACTOR, 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 affected 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:** 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, or the need to redo or revise the work for any reason except to accommodate a City request to materially alter the work, prior to City's acceptance, bearing the costs of such loss or damage to or such redo or revision of the work 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:** The Parties stipulate that in entering into this Agreement, the City is performing a solely governmental function and not a proprietary function. 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. **Prohibitions Pursuant to Texas Government Code:** By executing this Agreement Professional verifies that Profession (1) does not boycott Israel and will not during the term of this Agreement per Section 2274.002; (2) is not engaged in business with Iran, Sudan, or any company on the list referenced in Section 2252.152; (3) does not boycott energy companies and will not during the term of this Agreement per 2274.002; and (4) does not have a practice, policy, guidance, or directive of this Agreement against a firearm entity or firearm trade association and will not during the term of this Agreement per 2274.002.

(signature block on next page)

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

BIRKHOFF, HENDRICKS & CARTER, L.L.P. - "Professional"



Craig M. Kerkhoff, PE, CFM

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
(41 pages, including this page)

EXHIBIT A

ENGINEERING SERVICES

FOR

Beacon Island/Harbor Island Back Feed 12-inch Waterline

An existing 12-inch water line, approximately 530 linear feet, was constructed under South Shore Harbor Marina Channel in 1982 between Beacon Island and the Enterprise Avenue peninsula. The 12-inch is connected to the existing water system on Enterprise Avenue but is currently not connected to Beacon Island due to leakage of the water line after 40 years. The proposed project is new a 12-inch water line, approximately 750-feet lone, to replace the existing water line and connects the two portions of the system.

Constructability will be evaluated during design due to site constraints on each end of the project. It is intended to utilize the large open space on the interior of Beacon Island to initiate a directional drill bore under the harbor. The receiving end of the directional drill bore will require further evaluation during design. The existing connection location is very limited in accessible area, however a possible secondary connection location has been identified. The depth of the harbor will be surveyed by bathymetry and will determine the vertical constraints of the project. To aid in the design, geotechnical bores and testing will be completed to a depth of 60-ft on each side of the project. Additionally, hydraulic fracturing and inadvertent return calculations (HFIR) will be evaluated to determine the depth of the water line required under the harbor due to proposed construction methods.

Possible permits this project may require will be antiquities with the THC, WOTUS and USACE permitting, aquatic species presence/absence surveying, and will be completed, if necessary, with this project.

Temporary easements are included, as they will be required on each end of the bore. Permanent easements may be required depending on the location of existing easements (title research included) and potential routes to connect to the existing 12-inch water line along Enterprise Avenue. Blanket utility easements appear to exist on the South Shore Harbor condominiums, however coordination will still be required.

The scope and fees for the project is as follows:

PART I: DESIGN PHASE

A. 30% Phase

- 1) Upon receipt of topographical survey and mapping, Engineer will design and prepare construction plans to 30% level consisting of:
 - 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
- 2) Coordinate and prepare a list of preliminary Utility Conflicts and contact information for utilities.
- 3) Provide 30% level quantities and Engineer's OPCC.
- 4) Coordinate and provide a list of permits needed for the project.
- 5) Coordinate and provide a list of permanent and temporary easements.
- 6) Submit digital copies of half-size plans and other documents as appropriate per Exhibit B for City's review and comment.

B. 60% Phase

- 1) Upon receipt of 30% review comments and preferred water line routing, Engineer will design and prepare construction plans to 60% level consisting of:
 - a. Cover Sheet w/ index
 - b. General Notes
 - c. Project Layout
 - d. Address City's 30% comments and document responses in a letter to be submitted with 60% submittal.
 - e. Prepare any special detail or crossing section for the project.
 - f. Survey Control Sheet
 - g. Demolition Plan, as appropriate
 - h. Conduct, as appropriate, an inventory of possible impacted trees and provide a removal or protection plan and details
 - i. Provide detouring and/or traffic control plans for the project.
 - j. Prepare Plan and Profile drawings with station Number for the Water Line
 - k. SW3P Plan Sheet(s) and Details
 - l. Provide Standard CoLC Details applicable for project
- 2) Final ROW Document for Land Aquisition
- 3) Coordinate and update list of Utility Conflicts and contact information for appropriate utilities
- 4) Update, if needed, list of permits needed for the project.
- 5) Provide list of Technical Specifications that are needed for Project
- 6) Update Design Schedule
- 7) Provide 60% level quantities and Engineer's OPCC
- 8) Prepare applications for any permits needed for the project to be submitted later with final plans.

- 9) Submit PDF copies of half-size plans and other documents, as appropriate, per the Exhibit B listing for City's review and comment.

C. 90% Phase

- 1) Develop construction plans and detail to 90% level design.
- 2) Address City's 60% comments and document responses in a letter to be submitted with 90% submittal.
- 3) Prepare project manual consisting of front-end, bid schedule and technical specifications.
- 4) Provide SW3P Manual with appropriate documentations/signatures, if applicable for this project.
- 5) Update Engineer's OPCC to 90% level.
- 6) Prepare applications for any permits needed for the project to be submitted later with final plans.
- 7) Finalize utility conflicts list and submit to City to begin work with utility owners on any relocation warranted for the project.

D. 100% Phase

- 1) Finalize construction documents to 100% level design. Address all City 90% comments. Prepare a written response to all City's comments, to be submitted with the final submittal.
- 2) Finalize draft project manual consisting of City front-end, technical specifications, and bid schedule.
- 3) Finalize quantities and update Engineer's OPCC to 100% level design.
- 4) Submit 2 sets of half-size plans and project manual and in PDF format to the City.

PART II: BIDDING PHASE

- 1) Assist City in preparing the Notice to Bidders advertisement and obtaining bids. Upload bid documents on Civcast for bidders. City will advertise the project according to City requirements and bear cost.
- 2) Attend and assist City at pre-bid conference.
- 3) Provide information and responds to questions from the bidders.
- 4) Prepare addendums as needed for the project and upload on Civcast.
- 5) Tabulate and evaluate bids, check references, and provide recommendations to the City on award of contract.
- 6) Prepare and submit three (3) copied of Conformed Project Manual to the City and agreement with the selected contractor.

PART III: CONSTRUCTION PHASE

- 1) Prepare and submit five (5) sets of half-size Conformed Plans and Project Manual for use by City and the Contractor. Provide one (1) set of full-size plans to City Engineering Department.
- 2) Attend and assist City at the pre-construction meeting.
- 3) Periodic Site Visits (1 visit per month of construction) combined with monthly progress meeting.
- 4) Review, Track, and make recommendations related to RFIS, Material Submittals, Change Orders, etc.
- 5) Address found Design Conflicts in the Field
- 6) Prepare change orders as necessary.
- 7) Conduct one Substantial Completion walk through with the City and the contractor, and prepare a punch list.
- 8) Conduct one Final Completion walk through with the City and the contractor.
- 9) Prepare and submit one (1) set of hard copy and PDF of Record Drawings based on the red-line mark-ups of plans from the contractor.

PART IV: ADDITIONAL SERVICES

1) Survey for Design, Property Acquisition and Construction

Design Survey to include complete field topography, bathymetry, mapping, utility markings, trees, landscaping, visible irrigation system, and tie benchmark into City's control loop and tie-in street. See attached Survey Sub proposal for more details.

2) Land Rights Acquisition

Services to include facilitating with property and easement holders for easements and/or permits, appraisals or recordings. Metes and bounds to be provided by others.

3) Environmental/Geotechnical

Services to include a desktop Cultural Resources Assessment, WOTUS, USACE, geotechnical investigations and HFIR calculations.

4) Miscellaneous Project Expenses

A budget not to exceed \$2,500 is proposed for the project's miscellaneous expenses such as printing, postage, deliveries, local mileage to project site and City. BHC will not exceed this budget without prior approval. All project travels are considered to be local. Application fees for permits will be paid by the City.

PART V: EXCLUSIONS

The intent of this scope of services is to include only the services specifically listed herein and none others. Services specifically excluded from this scope of services include, but are not necessarily limited to the following:

- 1) Certification that work is in accordance with plans and specifications.
- 2) Consulting services by others not included in Scope of Services.
- 3) Contractor's means and methods.
- 4) Environmental cleanup
- 5) Environmental impact statements and assessments
- 6) Fees for permits
- 7) Fees for publicly advertising the construction project
- 8) Fiduciary responsibility to the City
- 9) Legal services in connection with easements and easement acquisitions
- 10) On-site construction safety precautions, programs, and responsibility (Contractor's responsibility)
- 11) Phasing of Contractor's work
- 12) Quality control and testing services during construction
- 13) Revisions and/or change orders as a result of revisions after completion of original design (unless to correct error on plans)
- 14) Traffic Impact Analysis
- 15) Trench safety designs

PART VI: COMPENSATION

Payment for engineering services described in Exhibit ‘A’ Parts I, II, & III shall be based on lump sum fees as listed below. Payment for engineering services described in Exhibit ‘A’ Part IV.1, IV.2 & IV.4 shall be based on subconsultants lump sum fee invoice cost times 1.10. Engineering services described in Exhibit ‘A’ Part IV.3 shall be based on subconsultants lump sum fee invoice cost times 1.08. Payment for miscellaneous project expenses shall be based on cost time 1.10.

SUMMARY OF COMPENSATION

BASIC SERVICES:

| | | |
|----------|------------------------------|------------------|
| Part I | 30% Plans | \$ 35,000* |
| Part I | 60% Plans | \$ 19,000* |
| Part I | 90% Plans | \$ 19,000* |
| Part II | 100% Plans | \$ 9,500* |
| Part II | Bidding Phase | \$ 5,000 |
| Part III | Construction Phase | \$ 12,000 |
| | Total Basic Services: | \$ 99,500 |

ADDITIONAL SERVICES:

| | | |
|-------------|---|-------------------|
| Part IV (1) | Survey plus 10% | \$ 14,300* |
| Part IV (2) | Land Rights plus 10% | \$ 17,732 |
| Part IV (3) | Environmental plus 8% | \$ 69,552* |
| Part IV (4) | Miscellaneous Project Expenses (NTE budget) | \$ 2,500 |
| | Sub Total Additional Services: | \$ 104,084 |
| | Total Not to Exceed: | \$ 203,584 |

*Time-critical tasks totaling \$166,352, to be completed within 180 days, excluding City review and approval periods, and permitting.

Payments are to be made and City agrees to pay within 30 days upon receipt.

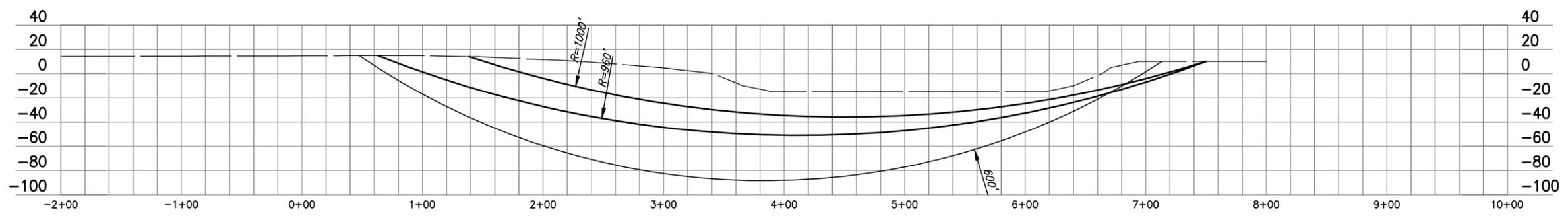
PART VII: PROJECT SCHEDULE

| | |
|--------------------------|--|
| Submit 30% Plans..... | 90 days from Notice to Proceed |
| Submit 60% Plans..... | 30 days from receipt of 30% comments from City |
| Submit 90% Plans..... | 30 days from receipt of 60% comments from City |
| Submit 100% Plans..... | 30 days from receipt of 90% comments from City |
| Bid & Award Phase..... | Estimated 75 days from advertisement |
| Construction Phase | Estimated 150 days from Contractor's Notice to Proceed |

Above calendar days exclude review periods by the City and permitting reviews by outside agencies.



CONCEPTUAL ROUTE



| | | | | | | |
|--|---|--|---|--|---|------------------------------------|
| | <p>These plans and related specifications were prepared for construction of this specific project only. Reuse of these documents is not permitted without written authorization of Birkhoff, Hendricks & Carter, L.L.P. If this drawing is converted to an electronic file, if any discrepancy occurs between the electronic file and the Birkhoff, Hendricks & Carter, L.L.P. original document, the original document will govern in all cases.</p> | <p>BIRKHOFF, HENDRICKS & CARTER, L.L.P. PROFESSIONAL ENGINEERS TBPE Firm No. 526; TBPLS Firm No. 10031800 11910 Greenville Ave., Suite 600 Dallas, Texas 75243 (214) 361-7900</p> | <p>THESE DOCUMENTS ARE FOR INTERIM REVIEW AND ARE NOT INTENDED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES.</p> <p>CRAIG M. KERKHOFF TEXAS P.E. NO. 106102 DATE: September 2024</p> | <p>CITY OF LEAGUE CITY, TEXAS SOUTH SHORE HARBOUR CROSSING</p> <p>####</p> | <p>BHC PROJECT NO. 2023-137</p> <p>APRIL 2025</p> | <p>SHEET NO. ####</p> |
|--|---|--|---|--|---|------------------------------------|



200 Houston Ave, Suite B, League City, Texas 77573
P.O. Box 16142, Galveston, TX 77552 (Mailing)
(281)554-7739
www.HighTideSurveying.com

April 22, 2025

Mr. Craig M. Kerkhoff, P.E.
Birkhoff, Hendricks & Carter, LLP
214-361-7900
kerkhoff@bhcllp.com

Subject: League City, TX – ~~South Shore Harbour Water Line Boring Project~~
Beacon Island/Harbor Island Back Feed 12-inch Waterline

SCOPE OF SERVICES

High Tide Land Surveying, LLC. (HTS) will provide surveying support for the proposed water line boring project starting at an existing water line on Beacon Island, under the South Shore Harbour Boat Channel, and connecting to an existing water line in South Shore Harbour Marina Townhomes. It is estimated that three water line easements will need to be created. Features to be surveyed are shown on the attached Site Exhibit.

PROPOSED FEES FOR SCOPE OF SERVICES

| | |
|---|--------------------|
| Survey Data Collection - Beacon Island (Lump Sum)..... | \$2,500.00 |
| Bathymetric Data Collection – Boat Channel (Lump Sum)..... | \$2,500.00 |
| Survey Data Collection – South Shore Harbour (Lump Sum)..... | \$3,500.00 |
| Stamped Topographic Survey Drawing (Lump Sum)..... | \$1,500.00 |
| Water Line Easement Exhibits & Descriptions x 3 (\$1,000 Each)..... | \$3,000.00 |
| Grand Total..... | \$13,000.00 |

DELIVERABLES

HTS will provide the following deliverables for this project:

- Signed and sealed survey drawing(s)
- CAD file of data collection
- ASCII point file of same

SCHEDULE

Approximate delivery time is 7 to 10 business days from receiving Notice to Proceed and/or Purchase Order from Client.

If you have any questions, please do not hesitate to call me at 281-554-7739.

Very truly yours,

James Kerneckel

James Kerneckel, CST
Project Manager
High Tide Land Surveying, LLC.

Approved by: _____

Date: _____



200 Houston Ave, Suite B, League City, Texas 77573
P.O. Box 16142, Galveston, TX 77552 (Mailing)
(281)554-7739
www.HighTideSurveying.com

Site Exhibit

South Shore Harbour Boat Channel, League City, Galveston County, Texas





April 23, 2025

Birkhoff Hendricks Carter, LLP
Attn: Craig Kerkhoff
11910 Greenville Ave #600
Dallas, TX 75243

Beacon Island/Harbor Island Back Feed 12-inch Waterline
Proposal for Right-of-Way Acquisition – ~~12" Waterline South Shore Harbour – League City~~

Dear Craig,

Thank you for the opportunity to provide a proposal for the acquisition of new right-of-way for the placement of new facilities along Beacon Circle and Enterprise Avenue in League City. We have evaluated the maps provided to WLG and arrived at 3 acquisition parcels across 3 tax held parcels.

Acquisition fees are flat rate and inclusive of all activities necessary to secure new utility easements and encroachment/crossing permits in forms acceptable to the city and BHC, including document preparation, meetings with property owners, negotiations, and execution of documents. In the event of an uncooperative party or when ownership cannot be reasonably determined, pre-condemnation support tasks for land rights acquisition are included in the scope of work.

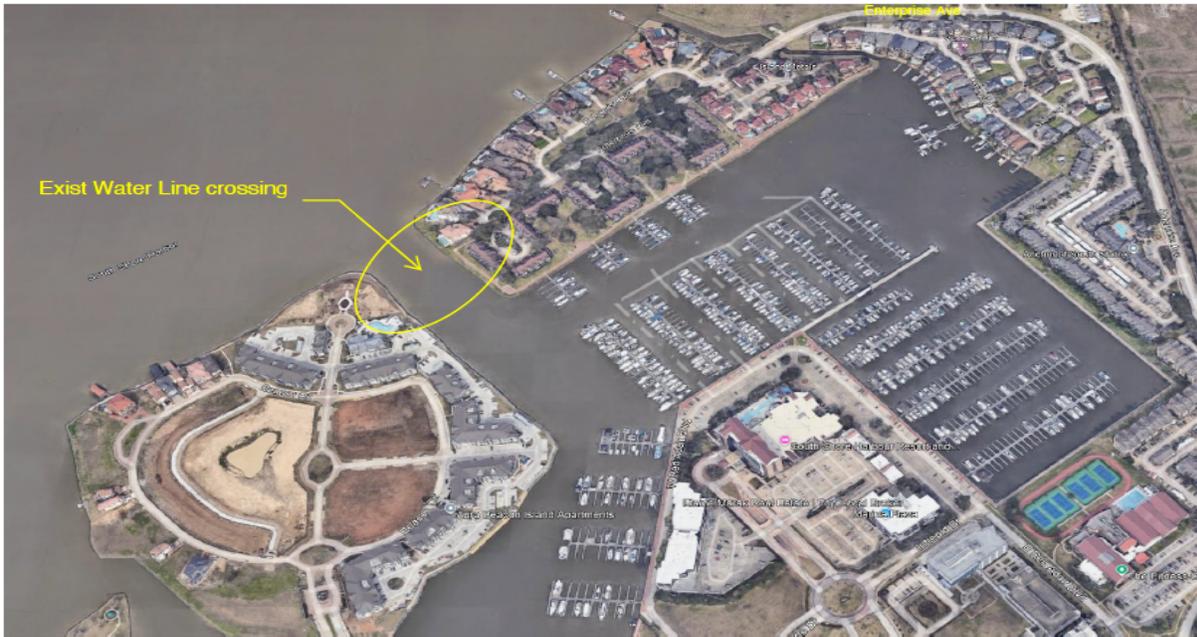
As with every project of this nature, we understand timing is critical, and we have the personnel and resources available for the successful on-time delivery of the land rights required. To communicate your acceptance, please sign and return the Authorization to Proceed included as the last page in the following exhibits.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Smith', is written over a horizontal line.

Jimmy Smith
Director of Client Relations

Attachment 1
 Beacon Island/Harbor Island Back Feed 12-inch Waterline
 Acquisition Parcel Maps and Owners



List of Owners & Parcel Count

Galveston CAD ID: 752677 ISOLA VENTURA LLC

Galveston CAD ID: 291019 SOUTH SHORE HARBOUR POINT

Galveston CAD ID: 609832 PRIII TRG BEACON ISLAND OWNER LP

Attachment 2
Beacon Island/Harbor Island Back Feed 12-inch Waterline
Schedule of Fees & Payment Milestones

| | |
|---|-------------------------------------|
| <u>Project Management Fee:</u> | \$4,000.00 |
| <u>Title Research Fee:</u> | \$495.00 /per parcel |
| <u>Easement Acquisition Fee:</u> | \$3,395.00 /per parcel |
| <u>Permit Acquisition Fee:</u> | \$3,395.00 /per parcel |
| <u>Recording Fees:</u> | \$100.00 /per parcel |
| <u>Eminent Domain Support:</u> | \$1,395.00 /per parcel |
| <u>Appraisal Fee per Parcel:</u> | \$3,650.00 /per parcel |
| <u>Additional Services:</u> <i>Includes any request(s), activities, or services to be provided outside of the "Scope of Services".</i> | \$150.00 per hour of service |

Project Management Fee is payable at onset of project. Acquisition Fees are payable in three milestones. All other fees are payable upon receipt of the deliverables.

Milestone 1 - 30% of per parcel fee

Payable after initial file set up, creation of the conveyance documents, supplemental memorandums, other project specific instruments, project maps.

Milestone 2 - 30% of per parcel fee

Payable upon commencement of negotiations, being the first substantial contact with the property owner by phone conversation or in-person meeting.

Milestone 3 - 40% of per parcel fee

Payable upon delivery of a signed instrument conveying the land rights needed for the Project (or other form of conveyance) or file delivered to Client's attorney for condemnation.

Attachment 4
Beacon Island/Harbor Island Back Feed 12-inch Waterline
Scope of Services – Easement & Permit Acquisition

Project Management

- Dedicated Project Manager assigned to the project.
- Prepare initial property owner contact list for use by CLIENT.
- Provide monthly summaries of Project expenses including amounts authorized, amounts paid and budget forecasting or less frequent as required by CLIENT.
- Bi-Weekly project update meetings to discuss project status, timeline, updates & important changes. Maintain status reports of all parcel and Projects activities
- Prepare, post, and maintain a GIS based acquisition tracking map illustrating parcels acquired, under negotiation, in eminent domain, etc. providing real-time updates to the CLIENT on the status of acquisition parcels.
- Monitoring the overall progress of the project to ensure maintaining project timeline
- Project Closeout (including record retention, quality control, and producing closing files)

File Management

- Working files will be kept in WLG's Projects administrative office, but documents generated or received by WLG will be forwarded to the CLIENT upon request to WLG.
- Prepare invoices utilizing the CLIENT's standard payment submissions forms with supporting documentation.
- Maintain records of all payments including warrant number, amount, and date paid, etc.
- Maintain copies of all correspondence and contacts with property owners.

Title Services

- Conduct a title search to identify existing encumbrances and current deed or instrument of conveyance to ensure accuracy of ownership.
- Prepare limited title certificates memorializing evidence of current ownership and encumbrances.
- Evaluate all title documents to identify possible conflicts with existing easements and/or facilities and communicate findings to CLIENT.

Negotiation Services

- Prepare the introductory contact and follow up letters, memorandum of agreement, instruments of conveyance and any other documents required or requested by CLIENT on applicable CLIENT forms.
- Maintain follow-up contacts and secure the instruments necessary to obtain fee simple interest in the acquisition parcel.
- If monetary compensation is to be offered to property owner(s) in connection with this Project, said compensation will be approved in writing by the CLIENT prior to said offer being presented to the property owner(s).
- Respond to property owner inquiries verbally and in writing, and in person as necessary.
- Maintain parcel files of original documentation related to the property interest acquired.

- Transmit to CLIENT any written counteroffer from property owners including supporting documentation, along with a response recommendation.

Land Surveys

- Surveys of the subject property and survey plat and metes and bounds description of the proposed easement area signed and sealed by WLG's Registered Professional Land Surveyor are not included in this proposal and will be provided by others.

Recording

- WLG to file secured easements of record with the County.

Appraisals

- To be initiated on an as-needed basis as approved by CLIENT to further regular negotiations or to prepare for an eminent domain action.
- Review all appraisals to confirm appropriate methodology and a project-wide consistency of value.

Deliverables

Upon completion of the acquisition of land rights, WLG shall deliver to CLIENT:

- Original signed and recorded instrument.
- Survey of the Easement Area
- Appraisal (if applicable)
- Copy of Memorandum of Agreement (if applicable)
- Limited Title Certificate

In the event of an uncooperative party, Whitman Land Group will provide the following eminent domain support tasks:

Negotiations and Acquisitions

- Prepare an initial offer letter that includes copies of all appraisal reports received on the property, a survey of the acquisition parcel (prepared by others), copies of the proposed conveyance instrument, and the Texas Landowner Bill of Rights. Delivery of the Initial Offer Letter will be via USPS Certified Mail, Return Receipt Requested.
- Negotiate in good faith with the property owner during the prescribed 30-day period for owners consideration of the Initial Offer.
- Prepare a Final Offer Letter that includes copies of all appraisal reports received on the property, a survey of the acquisition parcel (prepared by others), copies of the proposed conveyance instrument, and the Texas Landowner Bill of Rights. Delivery of the Final Offer Letter will be via USPS Certified Mail, Return Receipt Requested.
- Engage a local title company to conduct a complete title abstract and lien search prior to the filing of an eminent domain action with the Court to ensure all interested parties are named in the suit.
- Negotiate in good faith with the property owner during the prescribed 14-day period for owners consideration of the final offer.

- WLG shall maintain negotiators logs detailing attempts at contact, conversations, and other communications with the property owner during the negotiation period.

Deliverables:

Upon expiration of the 30-day and 14-day periods for the property owner's consideration of the Initial Offer and the Final Offer, WLG shall deliver to CLIENT and/or CLIENTs attorney to prepare petitions and file suit:

- Copy of the Initial Offer Letter and exhibits
- Copy of the Final Offer Letter and exhibits
- Land Survey of the Easement Area
- Appraisal
- Proposed Conveyance Document
- Negotiators Log
- Copies of written communications between WLG and property owner.

This Scope of Work for Condemnation Support Services does not adequately address all potential aspects of acquiring property rights as established in the Uniform Relocation Assistance and Real Property Acquisition Policy's Act of 1970 and further defined by Texas Senate Bill 18

Attachment 5
**Beacon Island/Harbor Island Back Feed 12-inch Waterline
 Information on Brokerage Services**



11-2-2015



Information About Brokerage Services

Texas law requires all real estate license holders to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

TYPES OF REAL ESTATE LICENSE HOLDERS:

- **A BROKER** is responsible for all brokerage activities, including acts performed by sales agents sponsored by the broker.
- **A SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:

AS AGENT FOR OWNER (SELLER/LANDLORD): The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

AS AGENT FOR BUYER/TENANT: The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

AS AGENT FOR BOTH - INTERMEDIARY: To act as an intermediary between the parties the broker must first obtain the written agreement of *each party* to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with, provide opinions and advice to, and carry out the instructions of each party to the transaction.
- Must not, unless specifically authorized in writing to do so by the party, disclose:
 - o that the owner will accept a price less than the written asking price;
 - o that the buyer/tenant will pay a price greater than the price submitted in a written offer; and
 - o any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

AS SUBAGENT: A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first.

TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARLY ESTABLISH:

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

LICENSE HOLDER CONTACT INFORMATION: This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

| | | | |
|--|-------------|------------------------------|--------------|
| Whitman Land Group, LLC | 9000918 | info@whitmanlandgroup.com | 972-318-9688 |
| Licensed Broker /Broker Firm Name or Primary Assumed Business Name | License No. | Email | Phone |
| Matthew Whitman | 0441422 | matthew@whitmanlandgroup.com | 972-979-2350 |
| Designated Broker of Firm | License No. | Email | Phone |
| Licensed Supervisor of Sales Agent/ Associate | License No. | Email | Phone |
| Sales Agent/Associate's Name | License No. | Email | Phone |

 Buyer/Tenant/Seller/Landlord Initials

 Date

Regulated by the Texas Real Estate Commission

Information available at www.trec.texas.gov

IABS 1-0



Attachment 6
Beacon Island/Harbor Island Back Feed 12-inch Waterline
Acceptance of Proposal / Authorization to Proceed

The above fees, scope of work, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Accepted By:

Signature

Name

Title

Date



11555 Clay Rd, Ste 100
Houston, TX 77043-1239
P 713-690-8989
F 713-690-8787
Terracon.com

April 2, 2025

Birkhoff, Hendricks & Carter, L.L.P.
11910 Greenville Ave., Suite 600
Dallas, Texas 75243

Attn: Mr. Craig Kerkhoff
P: (214) 361-7900
E: ckerkhoff@bhcllp.com

RE: Proposal for Environmental and Geotechnical Services
League City Water Line Improvements
League City, Galveston County, Texas 77573
Terracon Proposal No. P92257357

Dear Mr. Kerkhoff,

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to Birkhoff, Hendricks & Carter, L.L.P. (client) to provide services for the above-referenced project. It is the understanding of Terracon that we have been selected based on qualifications to provide the scope of services. The requested scopes of service include:

- Task 1 – Archeological Desktop Assessment
- Task 2 – Waters of the United States (WOTUS) Delineation
- Task 3 – Aquatic Species Presence/Absence Survey
- Task 4 – United States Army Corps of Engineers (USACE) Permitting
- Task 5 – Geotechnical Services
- Optional Task 6 – Compensatory Mitigation Planning and Support

1.0 PROJECT INFORMATION

Terracon understands the project site consists of approximately 491 linear feet of city water line improvements crossing South Shore Harbor in League City, Galveston County, Texas. The intended purpose of environmental and geotechnical services is for the maintenance of an existing water pipeline that crosses the South Shore Harbor.

The vicinity map provided in Figure 1 outlines the proposed project site. If this is not accurate, or if you have additional useful information, please inform us as soon as possible.



Figure 1. Site Vicinity Map.

2.0 SCOPES OF SERVICE

2.1 Task 1 – Archeological Desktop Assessment

Since the project is being proposed by League City, a political subdivision of the State of Texas, consultation with the Texas Historical Commission (THC) is required for its potential to affect cultural resources under the Antiquities Code of Texas (Code; Texas Natural Resources Code Chapter 191, Section 191.0525) and associated rules (Texas Administrative Code, Title 13, Chapter 26, Rule 26.2.3).

Terracon will prepare a letter report that includes a cultural resources desktop assessment for coordination with the THC. A desktop assessment typically includes the results of the review of numerous sources of information, including the restricted access version of the Texas Archeological Sites Atlas, the interactive Geographic Information System (GIS) of known archeological and historic sites as well as previous investigations, and the Potential Archeological Liability Model (PALM), a GIS tool developed by the Texas Department of Transportation (TxDOT) for determining the likelihood for buried prehistoric sites according to soil types present in certain areas of Texas. Terracon will also review additional sources of information including the United States Geological Survey (USGS) topographic maps, previous aerial imagery, TxDOT online resources for historic properties, and the Texas Freedom Colonies Project Atlas. These sources will be consulted to identify previously recorded cultural resources projects, known prehistoric or historical-period sites, and historic properties listed in or eligible for listing in the National Register of Historic Places (NRHP), and resources designated as State Antiquities Landmarks (SALS) within or overlapping the project area.

Terracon will present the results of these queries in a letter report prepared with appropriate illustrations and tabulated data summaries. This assessment will include our professional opinion about the need for additional work, if warranted. Upon review and acceptance of this assessment by the client, Terracon will coordinate these results with the THC.

This scope of work does not include fieldwork and does not include efforts to inform, confirm, coordinate, or otherwise communicate Terracon’s findings with any other regulatory agency other than the THC.

2.2 Task 2 – Waters of the United States (WOTUS) Delineation

This scope item is presented to assist the client in remaining in compliance with Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. The results of this scope may dictate the appropriate level of USACE permitting and/or coordination,

if any. Terracon will perform subtasks to accomplish this task, including a desktop review, a site visit, and report preparation as described below.

2.2.1 Desktop Review

Prior to visiting the site, background research will be conducted and will consist of locating and reviewing pertinent maps, aerial photographs, historical topographic maps, soil surveys, plant species data, United States Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) maps, soil data from the Natural Resources Conservation Service (NRCS), Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM), and other related data necessary for a thorough desktop review of site conditions. This desktop review will assist Terracon in preliminarily identifying suspect aquatic resources on the site. Typically, for larger sites, areas of interest are identified through the desktop review to identify areas to target in the field to avoid unnecessary time, effort, and costs associated with transecting the entire site.

2.2.2 Site Visit

A qualified environmental professional will perform a site visit to determine the existence and locations of aquatic features, including wetlands. The delineation methodology will follow the 1987 Corps of Engineers Wetland Delineation Manual and applicable regional supplements. Aquatic features will be mapped using a Global Positioning System (GPS) device capable of sub-meter accuracy and according to the procedures required by the USACE. Field personnel will photographically document on-site conditions as well as aquatic features.

2.2.3 Report Preparation

Terracon's comprehensive reports typically address the applicable framework, describe the assessment methodology, limitations, and findings, and provide site-specific conclusions and recommendations as appropriate. The WOTUS Delineation report will briefly describe the project, methods/sampling procedures, and results as required by the USACE. A preliminary determination and description of potentially jurisdictional WOTUS and potentially non-jurisdictional aquatic resources identified on the project site will be described in detail. Wetland determination data forms completed in accordance with USACE guidelines for each observation point will be included. Several maps showing the project site against relevant geospatial data will also be included. Finally, professional opinions regarding the potential jurisdictional status of the identified aquatic resources with supporting documentation and rationale will be offered. Once the report has been submitted and reviewed by the client, Terracon will address one round of revisions.

2.2.4 Task-Specific Limitations and Considerations

Wetlands are naturally evolving systems. Effects of man-made disturbances, temporal variations (e.g., rainfall, season, drought), and subjective interpretation of data may preclude assessment in conformance with USACE requirements and significantly affect findings, conclusions, and recommendations.

This scope of work does not include an effort to inform, confirm, coordinate, or otherwise communicate Terracon’s findings with the USACE, Environmental Protection Agency, or any other regulatory agency.

2.3 Task 3 –Aquatic Species Presence/Absence Survey

Under this scope of work, Terracon personnel will determine if the project site and proposed footprint contains the presence/absence of oyster reefs or seagrass species that are protected by applicable state and/or federal laws, and if so, what further action may be necessary. In the event the pathway for the project will require USACE permitting, an Aquatic Species Habitat Assessment and report is required as supporting documentation.

Special aquatic sites are commonly found along coastal shorelines. Submerged aquatic vegetation (SAV) can include seagrasses and macro-algae anchored to a substrate. Oyster reefs are an aggregation of individual bivalve mollusks fused together and on hard submerged surfaces in coastal waters. Both SAV and oyster reefs are considered by the USACE Galveston District to be special aquatic sites, and therefore WOTUS, as defined under Section 404 of the CWA. The Texas Parks and Wildlife Department (TPWD) is also an enforcement authority regarding the management and impacts to seagrasses and oyster reefs within Texas. Per the Texas Administrative Code (TAC), it is illegal to uproot seagrass in state waters. The USACE and TPWD work conjointly to avoid, minimize, and mitigate impacts to SAV and oyster reefs. Terracon will complete a presence-absence survey to determine if special aquatic sites are present within the project area which will aid in the early site design stages and agency coordination.

2.3.1 Desktop Review

Prior to visiting the project site, publicly available resources will be reviewed to assist Terracon in preliminarily identifying the potential for the presence/absence of seagrass and/or oyster reefs. Such resources typically include aerial photographs, USGS topographic maps, TPWD Seagrass Viewer, applicable federal and state species lists (including but not limited to the USFWS Information for Planning and Consultation or IPaC list and TPWD county list), designated critical habitats, other current species information, United States Department of Agriculture Natural Resources Conservation Service (USDA

NRCS) – Web Soil Survey maps, and the NWI. Published resources currently available to Terracon through the performance of earlier work will be used as practicable.

2.3.2 On-Site Assessment

Qualified environmental scientists will make a preliminary assessment of potential impacts by comparing published habitat parameters to site conditions evinced by the desktop review documents. Personnel will then conduct a visual reconnaissance of the site to determine the potential presence/absence of seagrass and/or oyster reefs within the project site.

Due to the depth at the project site, a visual inspection and assessment for the habitat of seagrass and/or oyster reefs will be performed. Opportunistic grab samples will be performed to characterize the substrate within the project area. The apparent health of observed oysters and/or SAV will also be noted for inclusion into the report, if applicable. The location and approximate extent of SAV and oysters will be surveyed using a submeter GPS unit and then analyzed in the GIS database, if identified within the boundaries of the project site. Additionally, should any other natural or manmade features of interest be present within the project area, those features will also be surveyed for inclusion into the final report. Photographs will be taken as practical.

2.3.3 Report Preparation

The special aquatic site presence-absence survey report will briefly describe the project, methods/sampling procedures, and results to be provided to the USACE. In addition, the GIS dataset of special aquatic site presence (if identified) locations and extent as well as photographic documentation will be provided. Maps showing the project site against relevant geospatial data will also be included.

Following a survey confirming the presence/absence of seagrass and/or oyster reefs, Terracon will coordinate with the USACE Galveston District with findings from the survey. The EFH Report would allow better coordination between the Nation Marine Fisheries Service (NMFS) and the USACE Galveston district, and the client towards issuance of authorization of installation of infrastructure into a Traditional Navigable Waterway (TNW).

Finally, professional opinions, conclusions, and a brief overview of anticipated permitting requirements applicable to the proposed project will be provided. The Aquatic Species Survey Report will be prepared in a manner so that it can be easily attached and serve as a supplement to additional documentation which can be submitted to USACE for review, coordination, and activity authorization, if required.

2.3.4 Task-Specific Limitations and Considerations

Readily available resources do not typically include comprehensive records of documented sightings as such information is generally not made available to the public. No determination can wholly eliminate uncertainty regarding project effects on listed species. The determinations, findings, and conclusions provided in this scope of services should not be considered authoritative. The limited scope of services described herein may not allow a conclusive determination to be made. In such cases, additional assessments may be recommended.

Due to the private ownership of property within the boundaries of the project site the aquatic species survey will be limited to only the property granted access through the County of League City. Should additional surveys, or reporting required by regulatory entities, such as but not limited to an Essential Fish Habitat (EFH) Report pursuant to the Magnuson-Stevens Act, Terracon will provide an additional proposal and fee including coordinating with property owners for access, if necessary. Should significant impacts be proposed to any special aquatic sites, the regulatory agencies may require more detailed data regarding the status of the special aquatic site within the project boundary. More detailed data may include species density, volume, organism size, and water quality parameters.

From previous coordination and communication with the USFWS, that agency does not offer concurrence with no effect determinations, and typically does not provide further correspondence regarding no effect determinations. However, if there is a finding of potential impacts on the sites, the report will need to be submitted for their review. Coordination with USFWS beyond the initial IPaC inquiry and/or a concurrence letter is not included in this scope of services. Species specific surveys are not included in this proposal.

The TPWD does not require coordination for no effect determinations. However, coordination will be required if listed species are positively identified during the site assessment. Coordination with TPWD beyond the initial database inquiry and/or a concurrence letter is not included in this scope of services.

2.4 Task 4 – USACE Permitting

If it is determined that there are jurisdictional aquatic features within the project site, and if project-related activities will permanently impact those jurisdictional aquatic features, a Section 404 or Section 10 permit will be required. Generally speaking, activities authorized under a Nationwide Permit (NWP) cannot cause the loss of more than 0.5 acres of wetland and/or 0.03-acres of an impact to stream features.

2.4.1 Pre-Construction Notification Preparation

There are a limited number of activities authorized under an NWP that do not require a Pre-Construction Notification (PCN). However, if it is found to be necessary, Terracon will draft a PCN that includes exhibits showing the project site against relevant geospatial data, simple plan and profile views of the proposed construction, photographs, and all necessary supplemental documents. Terracon will participate in an introductory meeting with the USACE, along with one round of submissions of the proposed impacts. Additional meetings and consultation with the USACE will require a change order to be issued. A WOTUS Delineation Report must be included in a PCN. The delineation is same scope item as listed above as Task 2.

The client will provide the following necessary additional items and information:

- Engineering plans that show the full extent of work for the entire project area. The USACE prefers plans that are at least 90% complete. It is important to note that changing the plans after the application has been submitted will require a re-submission.
- A formal project description including the purpose and need.
- Alternative construction methods and site layouts that may have been considered before arriving to the final design including, but not limited to temporary and permanent impacts.
- Secondary environmental impact avoidance and minimization measures (i.e., Storm Water Pollution Prevention Plan).

2.4.2 Task-Specific Limitations and Considerations

The permitting process under Section 404 and/or Section 100 of the CWA requires a detailed environmental impact assessment of the project site. Furthermore, coordination with other federal agencies may be necessary, potentially extending review periods. Terracon will assist the client in navigating the permit process through documentation and coordination with relevant agencies as applicable.

2.4.3 Timeline

Once the PCN has been submitted, the USACE will respond with an official Acknowledgement of Receipt. They will have 30 days from the date of Acknowledgement of Receipt to ask for supplemental information. If they do, the 30-day "clock" will start from the day the requested information is received. If they do not ask for more information, or if the 30-day inquiry window expires, the PCN is considered administratively complete. The USACE then has an additional 45 days to decide and issue project authorization. If granted, the applicant can proceed with the proposed activities



as outlined in the PCN. The typical turnaround for a NWP in the Galveston District is 75 to 90 days, but can be prolonged due to additional information requests

This scope does not include any efforts related to jurisdictional determinations, USACE Level I or Level II Stream Condition Assessment, USACE site visits, or preparing and obtaining USACE Permits. A change order will be negotiated in the event any of these services are required.

2.5 Task 5 – Geotechnical Services

2.5.1 Project Understanding

Our geotechnical Scope of Services is based on our understanding of the project as described by Birkhoff, Hendricks & Carter, L.L.P. and the expected site and subsurface conditions as described below. We have not visited the project site to confirm the information provided.

We understand the proposed improvements include the installation of a new 12-inch diameter water line across the South Shore Harbor utilizing Horizontal Directional Drilling (HDD) methods and that Terracon has been requested to provide Hydraulic Fracturing and Inadvertent Return (HFIR) analysis for the installation of the proposed water line. A profile of the planned HDD installation has not been provided for development of this proposal; however the design elevation and slope of the HDD will be required to complete the HFIR. We also understand the existing 12-inch diameter water line across the harbor is located about 3 feet below the bottom of the channel, has not been in service, and is planned to be abandoned in place.

2.5.2 Anticipated Conditions

| Item | Description |
|------------------------------|---|
| Existing Improvements | Based on available aerial photographs and information provided by the client, the site on both sides of the proposed trenchless crossing are occupied by residential developments, underground utilities, and concrete sidewalks and pavement areas. The south side of the crossing appears to be also occupied by wide open grass areas. An existing bulkhead appears to be along the north side of the channel. |
| Current Ground Cover | Grass, weeds, concrete |
| Existing Topography | Ground surface is expected to be relatively level. Approximate ground surface elevation (EL.) is 11 feet above mean sea level (msl) and the bottom of the channel is approximately at EL. - 12 feet below msl. |



| Item | Description |
|---------------------------------------|--|
| Site Access | We expect the site and all exploration locations, are accessible with our all-terrain vehicle (ATV)-mounted drilling equipment and support vehicles during normal business hours. |
| Expected Subsurface Conditions | Our experience near the vicinity of the proposed development and review of geologic maps indicates subsurface conditions consist of thick interbedded layers of clay, fine sand, and silt from the Beaumont Formation. |

2.5.3 Geotechnical Scope of Services

Our proposed Scope of Services consists of field exploration, laboratory testing, and engineering/project delivery. These services are described in the following sections.

2.5.4 Field Exploration

The geotechnical field exploration program is expected to be completed with 2 days of on-site activities and includes subsurface borings as describe below:

| Number of Borings | Planned Boring Depth (feet) ¹ | Planned Location ² |
|-------------------|--|--|
| 2 (B-1 and B-2) | 60 | On either side of the channel along the proposed HDD alignment |
| 2 | 120 | Total |

1. Below existing grade.
2. The planned boring locations are shown in Figure 2.

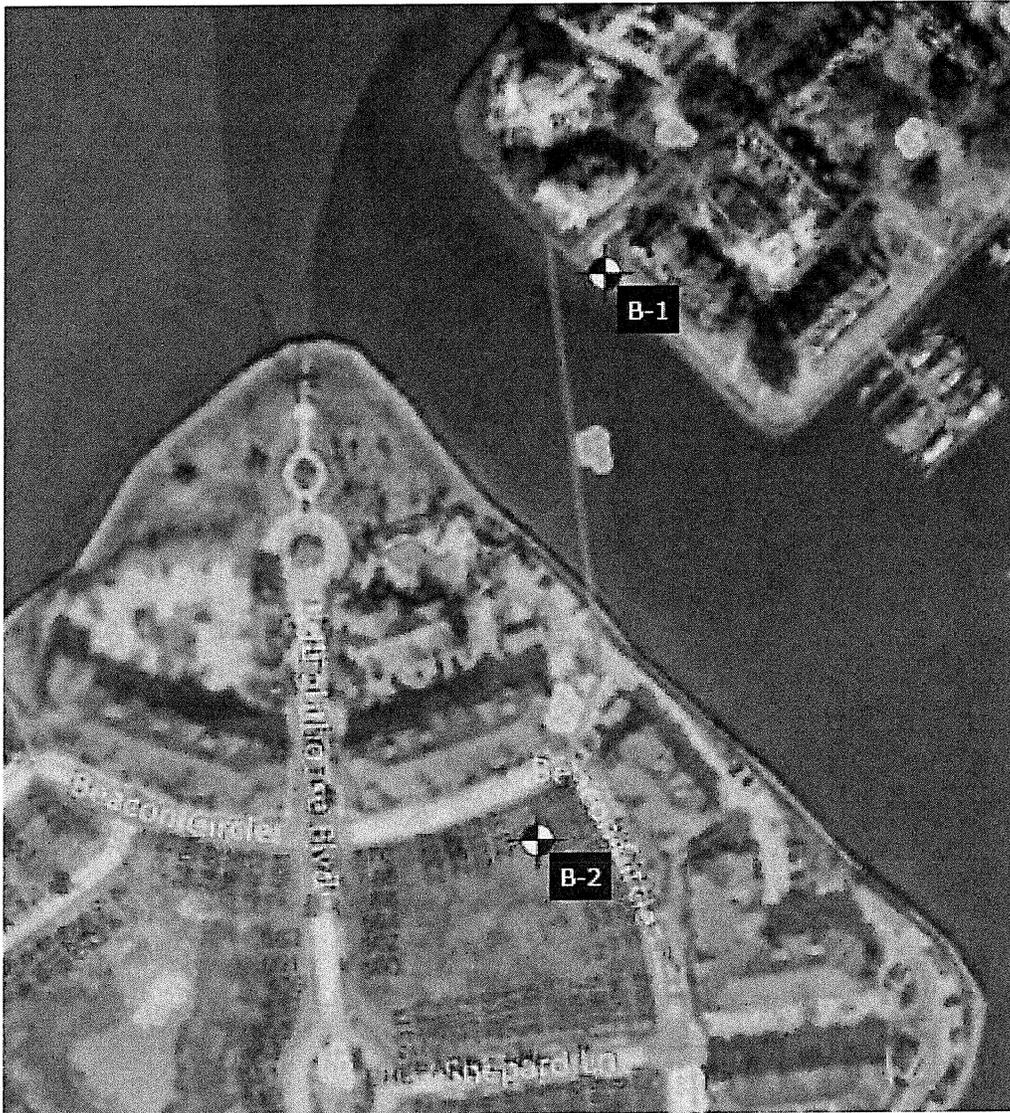


Figure 2. Anticipated Exploration Plan

Boring Layout and Elevations: We will use handheld Global Positioning System (GPS) equipment to locate exploration locations with an estimated horizontal accuracy of +/-25 feet. Field measurements from existing site features may be utilized. If available, approximate elevations will be obtained by interpolation from a site specific, surveyed topographic map. We can alternatively coordinate with your Project Surveyor to include locations and surface elevations in project information if requested.

Subsurface Exploration Procedures: We will advance borings with an ATV-mounted drill rig using solid stem flight augers and wash rotary drilling methods. Samples will be obtained continuously in the upper 10 feet of each boring and at intervals of 5 feet

thereafter. Soil sampling is typically performed using open-tube and/or split-barrel sampling procedures. The split-barrel samplers are driven in accordance with the standard penetration test (SPT). The samples will be placed in appropriate containers, taken to our soil laboratory for testing, and further classified by a Geotechnical Engineer. In addition, we will observe and record groundwater/water levels during drilling and sampling.

Our exploration team will prepare field boring logs as part of standard drilling operations including sampling depths, penetration distances, and other relevant sampling information. Field logs include visual classifications of materials observed during drilling, and our interpretation of subsurface conditions between samples. Final boring logs, prepared from field logs, represent the Geotechnical Engineer's interpretation, and include modifications based on observations and laboratory tests.

Property Disturbance: Terracon will take reasonable efforts to reduce damage to the property. However, it should be understood that in the normal course of our work some disturbance could occur, including rutting of the ground surface. We have not budgeted to restore the site beyond backfilling our boreholes.

We will backfill borings with cement-bentonite grout immediately upon completion. Our services do not include repair of the site beyond backfilling our boreholes. Excess auger cuttings will be left in the grass areas in the vicinity of boreholes.

Site Access: Terracon must be granted access to the site by the property owner. We expect the Right-of-Entry (ROE) by the City of League City be provided to us as authorization to access the property for conducting field exploration in accordance with the Scope of Services. Our proposed fees do not include time to negotiate and coordinate access with landowners or tenants. Terracon will conduct field services during normal business hours (Monday through Friday between 7:00am and 5:00pm). If our exploration must take place over a weekend or at night, please contact us so we can adjust our schedule and fee.

2.5.5 Safety

Terracon is not aware of environmental concerns at this project site that would create health or safety hazards associated with our exploration program; thus, our Scope considers standard OSHA Level D Personal Protection Equipment (PPE) appropriate. Our Scope of Services does not include environmental site assessment services, but identification of unusual or unnatural materials observed while drilling will be noted on our logs.

Exploration efforts require borings into the subsurface, therefore Terracon will comply with Texas 811 to request utility location service within dedicated public easements. We will consult with the landowner/client regarding potential utilities or other unmarked

underground hazards. Based upon the results of this consultation, we will consider the need for alternative subsurface exploration methods as the safety of our field crew is a priority.

Private utilities should be marked by the owner/client prior to commencement of field exploration. Terracon will not be responsible for damage to private utilities not disclosed to us.

Terracon proposes to subcontract with a private utility locating service or use in-house utility locating equipment. Fees associated with this service are included in our Scope of Services.

The detection of underground utilities is dependent upon the composition and construction of the utility line; some utilities are comprised of non-electrically conductive materials and may not be readily detected. The use of a private utility locate service would not relieve the landowner/client of their responsibilities in identifying private underground utilities.

2.5.6 Laboratory Testing

The project engineer will review field data and assign laboratory tests to understand the engineering properties of various soil strata. Exact types and number of tests cannot be defined until completion of fieldwork, but we anticipate the following laboratory testing may be performed:

- Water content
- Atterberg limits
- Percent passing No. 200 sieve
- Unit dry weight
- Unconfined compressive strength
- Unconsolidated-undrained triaxial

Based on the results of our field and laboratory programs, we will describe and classify soil samples in accordance with the Unified Soil Classification System (USCS).

2.5.7 Engineering and Project Delivery

The results of our field and laboratory programs will be evaluated, and a geotechnical engineering report will be prepared under the supervision of a licensed professional engineer. The geotechnical engineering report will provide the following:

- Boring logs with field and laboratory data
- Stratification based on visual soil classification
- Groundwater levels observed during drilling

- Site Location and Exploration Plan
- Subsurface exploration procedures
- Description of subsurface conditions
- Geotechnical recommendations for the proposed HDD crossing including HFIR analyses

In addition to an emailed report, your project will also be delivered using Terracon's online client portal **Compass**. Upon initiation, we provide you and your design team the necessary link and password to access the website (if not previously registered). Each project includes a calendar to track the schedule, an interactive site map, a listing of team members, access to the project documents as they are uploaded to the site, and a collaboration portal. We welcome the opportunity to have project kickoff conversations with the team to discuss key elements of the project and demonstrate features of **Compass**. The typical delivery process includes the following:

- Project Planning – Project information, schedule, and anticipated exploration plan
- Site Characterization – Findings of the site exploration and laboratory results
- Geotechnical Engineering Report for the proposed HDD crossing

When services are complete, we upload a printable version of our completed Geotechnical Engineering reports, including the professional engineer's seal and signature, which documents our services. Previous submittals, collaboration, and the report are maintained in our system. This allows future reference and integration into subsequent aspects of our services as the project goes through final design and construction.

3.0 OPTIONAL SCOPE OF SERVICES

3.1 Task 6 – Compensatory Mitigation Planning & Support

If it is determined that there are jurisdictional aquatic features within the project site, and if project-related activities will impact those jurisdictional aquatic features, a Section 404 or Section 10 permit will be required.

If impacts to jurisdictional aquatic features exceed 0.5-acres of a wetland and/or .03-acre to streambeds, compensatory mitigation will be required. This scope of work includes an assessment of wetland and stream ecological function using the USACE Interim Hydrogeomorphic Method and the USACE Level I Stream Condition Assessment, when necessary. This scope of work also includes assisting the client in obtaining credits from an approved mitigation bank and estimating the costs associated, when necessary or available.

Information related to compensatory mitigation and the purchase of credits (if any) will be included in the NWP PCN application, listed above as Task 4. The type and amount of mitigation including its price will be calculated prior to submittal of the PCN. The client will be responsible for payment to the designated mitigation bank once the permit has been issued. The permit is usually not considered final until payment is made in full, and receipt is delivered to the USACE.

This scope of work does not include assisting the client with all other types of approved mitigation (i.e., permittee-responsible mitigation) or obtaining USACE permitting. This scope of work does not include a Level II Stream Condition Assessment.

4.0 SCHEDULE

Archeological Desktop Assessment

The Archeological Desktop Assessment will be initiated within 10 business days upon receipt of authorization and a written notice to proceed (NTP).

WOTUS Delineation

Services will be initiated within 15 days upon receipt of authorization, per below, with written notice to proceed. The initial draft submittals will be emailed to the client for review and/or approval within 45 business days of initiation. If schedule delays are anticipated based on weather and/or encountered site conditions, the client will be contacted to discuss changes in the schedule.

Aquatic Species Habitat Assessment

Services will be initiated within 15 days upon receipt of authorization, per below, with written notice to proceed. The initial draft submittals will be emailed to the client for review and/or approval within 45 business days of initiation. If schedule delays are anticipated based on weather and/or encountered site conditions, the client will be contacted to discuss changes in the schedule.

USACE Permitting

Services will be initiated upon completion of the WOTUS delineation and Aquatic Species Habitat assessment, and upon receiving 90% complete construction drawings from the client, complete with permanent and temporary impacts. Terracon will draft the permit information and arrange USACE consultation on a timeline that supports both the client and governing agency within 45 days of approval to proceed.



Geotechnical Services

We developed a schedule to complete the Scope of Services based upon our existing availability and understanding of your project schedule. However, our schedule does not account for delays in field exploration beyond our control, such as weather conditions, delays resulting from utility clearance, permit delays, or lack of permission to access the boring locations. In the event the schedule provided is inconsistent with your needs, please contact us so we may consider alternatives.

| Delivery on Client Portal | Schedule ^{1, 2} |
|----------------------------------|---|
| Kickoff Call with Client | 3 to 5 working days after notice to proceed |
| Mobilization | 7 to 10 working days after notice to proceed |
| Site Characterization | 10 working days after completion of field program |
| Geotechnical Engineering | 15 working days after completion of field program |

1. Upon receipt of your notice to proceed we will activate the schedule component on **Compass** with specific, anticipated dates for the delivery points noted above as well as other pertinent events.
2. Standard workdays. We will maintain an activities calendar within on **Compass**. The schedule will be updated to maintain a current awareness of our plans for delivery.

Optional Scopes of Service

Compensatory Mitigation Support & Planning

Services will be initiated upon completion of the iHGM USACE Functional Assessment, and as required by the USACE. Terracon will assist the client in researching and obtaining mitigation credits in a timely manner, and at the scheduling and availability of the applicable mitigation service. Compensatory mitigation credits may be utilized from a selection of banks due to the availability of credible resources.

5.0 RELIANCE

The reports will be prepared for the exclusive use and reliance of the client. Reliance by any other party is prohibited without the client's and Terracon's written authorization.

If the client is aware of additional parties that will require reliance on the reports, the names, addresses, and relationships of these parties should be provided for Terracon approval prior to the time of authorization to proceed. Terracon may grant reliance on the reports to those approved parties upon receipt of a fully executed Reliance Agreement

(available upon request) and receipt of the information requested in the Reliance Agreement. If, in the future, the client and Terracon consent to reliance on the reports by a third party, Terracon may grant reliance upon receipt of a fully executed Reliance Agreement, requested information, and receipt of an additional minimum fee of \$500 per relying party.

Reliance on the reports by the client and all authorized parties will be subject to the terms, conditions, and limitations stated in the Agreement for Services, sections of this proposal incorporated therein, the Reliance Agreement, and reports. The limitation of liability defined in the Agreement for Services is the aggregate limit of Terracon's liability to the client and all relying parties.

6.0 SCOPE AND REPORT LIMITATIONS

Site Access and Safety

The client shall secure all necessary site-related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary project site access agreement. Terracon Consultants will be responsible for supervision and site safety measures for its own employees but shall not be responsible for the supervision or health and safety precautions for any third parties, including Client's contractors, subcontractors, or other parties present at the site. In addition, Terracon Consultants retains the right to stop work without penalty at any time Terracon believes it is in the best interests of Terracon employees or subcontractors to do so in order to reduce the risk of exposure to unsafe site conditions. Client agrees it will respond quickly to all requests for information made by Terracon related to Terracon Consultant's pre-task planning and risk assessment processes.

The findings and conclusions presented in the final reports will be based on the project site's current utilization and the information collected as discussed in this proposal. Please note that we do not warrant database or third-party information (such as from interviewees), or regulatory agency information used in the compilation of reports. The environmental services described above will be performed in accordance with that level and care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. Except for the standard of care previously stated, Terracon makes no warranties or guarantees, express or implied, relating to Terracon's services and Terracon disclaims any implied warranties or warranties imposed by law, including warranties of merchantability and fitness for a particular purpose. The stated and inherent limitations of the Scope of Services proposed herein must be considered when the user formulates opinions as to potential regulatory requirements associated with development of the site.



7.0 COMPENSATION

Compensation for the proposed Scope of Services shall be completed for a lump sum fee. Invoices would be submitted on a monthly, percent complete basis. A summary of proposed fees is provided below.

| Base Scopes of Service | Fee | Authorized By Client |
|--|------------|--|
| Archeological Desktop Assessment | \$2,500 | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| WOTUS Delineation | \$11,200 | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Aquatic Species Presence/Absence Survey | \$12,700 | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| USACE Permitting | \$13,500 | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Geotechnical Services | \$24,500 | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Optional Scopes of Service | Fee | Authorized By Client |
| Compensatory Mitigation Planning & Support | \$8,000 | <input type="checkbox"/> Yes <input type="checkbox"/> No |

The scope of services outlined in this proposal will be performed on a Lump Sum basis and will be billed on a percentage complete basis on a 30-day cycle. The stated fees are valid only for 90 days after the date of this proposal. Once initiated, should the completion of the proposed Scope of Services be delayed by the client for a period exceeding four months, additional charges may apply. Additional services requested or approved by the client, such as consultation or other work that is not specifically included in the Scope of Services described in this proposal, will be performed on a lump sum basis for an additional fee based on a not-to-exceed budget.

8.0 AUTHORIZATION

The terms, conditions, and limitations stated in the Agreement for Services and sections of this proposal incorporated therein, shall constitute the exclusive terms and conditions and services to be performed for this project. If this proposal meets with your approval, work may be initiated by returning a fully executed copy of this proposal to our Houston office.



We appreciate the opportunity to provide this proposal and look forward to working with you on this project. If you have any questions or comments regarding this proposal or require additional services, please give me a call.

Sincerely,

Terracon Consultants, Inc.

Shelby Wallace

Shelby Wallace, M.S.
Staff Scientist

A handwritten signature in black ink, appearing to read "Jon Lohse".

Jon Lohse, Ph.D.
Department Manager

Attachments: Agreement for Services

AGREEMENT FOR SERVICES

This **AGREEMENT** is between Birkhoff Hendricks & Carter LLP ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the League City Water Line project ("Project"), as described in Consultant's Proposal dated 03/24/2025 ("Proposal"), including but not limited to the Project Information section, unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

- 1. Scope of Services.** The scope of Consultant's services is described in the Proposal, including but not limited to the Scope of Services section ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. When Consultant subcontracts to other individuals or companies, then consultant will collect from Client on the Subcontractors' behalf. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the Project.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Proposal, including but not limited to the Compensation section, unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
- 5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties other than those who have executed Consultant's reliance agreement, subject to the prior approval of Consultant and Client.
- 6. LIMITATION OF LIABILITY. CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$50,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. PRIOR TO ACCEPTANCE OF THIS AGREEMENT AND UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION IN THE FORM OF A SURCHARGE TO BE ADDED TO THE AMOUNT STATED IN THE COMPENSATION SECTION OF THE PROPOSAL. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S), OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.**
- 7. Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's Services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of Services on the project.
- 8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. **EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$2,000,000 occ / \$4,000,000 agg); (iii) automobile liability insurance (\$2,000,000 B.I. and P.D. combined single

limit); (iv) umbrella liability (\$5,000,000 occ / agg); and (v) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

- 10. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.**
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client shall cause all tests and inspections of the site, materials, and Services performed by Consultant to be timely and properly scheduled in order for the Services to be performed in accordance with the plans, specifications, contract documents, and Consultant's recommendations. No claims for loss or damage or injury shall be brought against Consultant by Client or any third party unless all tests and inspections have been so performed and Consultant's recommendations have been followed. Unless otherwise stated in the Proposal, Client assumes sole responsibility for determining whether the quantity and the nature of Services ordered by Client is adequate and sufficient for Client's intended purpose. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by Services not performed due to a failure to request or schedule Consultant's Services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods. The extension of unit prices with quantities to establish a total estimated cost does not guarantee a maximum cost to complete the Services. The quantities, when given, are estimates based on contract documents and schedules made available at the time of the Proposal. Since schedule, performance, production, and charges are directed and/or controlled by others, any quantity extensions must be considered as estimated and not a guarantee of maximum cost.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of the testing procedures (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Materials unless specifically provided in the Services, and that Client is responsible for directing such disposition. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site and Consultant shall not be responsible for any claims, losses, or damages allegedly arising out of Consultant's performance of Services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Unless otherwise stated in the Proposal, Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any third parties, including Client's contractors, subcontractors, or other parties present at the site. In addition, Consultant retains the right to stop work without penalty at any time Consultant believes it is in the best interests of Consultant's employees or subcontractors to do so in order to reduce the risk of exposure to unsafe site conditions. Client agrees it will respond quickly to all requests for information made by Consultant related to Consultant's pre-task planning and risk assessment processes.

Consultant: **Terracon Consultants, Inc.**
By:  Date: **4/2/2025**
Name/Title: **Jonathan C Lohse / Cultural Resources Group Manager**
Address: **11555 Clay Rd, Ste 100
Houston, TX 77043-1239**
Phone: **(713) 690-8989** Fax: **(713) 690-8787**
Email: **Jon.Lohse@terracon.com**

Client: **Birkhoff Hendricks & Carter LLP**
By: _____ Date: _____
Name/Title: **Craig Kerkhoff /**
Address: **11910 Greenville Ave Ste 600
Dallas, TX 75243-9365**
Phone: **(214) 361-7900** Fax: _____
Email: **CKerkhoff@BHCLLP.COM**

Exhibit B

Applicable - See Next Pages

PSA Exhibit B

PHASE REQUIREMENTS

I. Design Phase Services 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**
- L. **Print and bind three (3) sets of contracts/specifications, secure Contractor signatures and deliver signed contracts to the City for final execution.**

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**