

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

COUNTY OF BRAZORIA §

This Agreement for professional services ("Agreement") is made and entered into by and between **BRAZORIA COUNTY**, a political subdivision of the State of Texas, hereinafter referred to as the "County" and DE Corp., 3100 W. Alabama, Houston, Texas 77098, a Texas Corporation, hereinafter referred to as "Consultant".

RECITALS

The County intends to enter into a professional services agreement for engineering services for the restoration of 4,600 feet of natural dune systems, hereinafter called the "Project"

The County desires that Consultant perform certain professional engineering and related services in connection with the Project; and

Consultant represents that it is qualified and desires to perform such services.

In consideration of the mutual covenants, agreements and benefits to the Parties hereto, it is agreed as follows:

TERMS

Article 1 Scope of Agreement

1.01 The Consultant agrees to perform professional engineering services as set forth in the Exhibits attached hereto and incorporated herein.

Article 2 Character and Extent of Services

2.01 The Consultant shall perform its obligations under this Contract in accordance with the Scope of Work within the Consultant's proposal attached hereto as **Exhibit "A."** County and Consultant may agree to amend this contract. All amendments to this contract will be added as **"Exhibit F-"** (F-1, F-2, etc.).

2.02 The Consultant and County agree and acknowledge that the County is entering into this Contract in reliance on the Consultant's competence and qualifications, as those were presented to County by Consultant with respect to professional services. The Consultant, in consideration for the compensation set forth expressly herein, shall at all times utilize its skill and attention to fully, timely, and properly render professional services for the development of the Project to final

completion as set out in, or reasonably inferred from, the Scope of Work. This shall be done in a manner utilizing the degree of care ordinarily used by Consultants performing similar services on projects of a similar nature and scope within the State of Texas.

2.03 The Consultant shall be represented by a professional engineer, who has been assigned by Consultant to manage the Project, licensed to practice in the State of Texas, at meetings of any official nature concerning the Project, including, but not limited to, scope meetings, status meetings, pre-bid meetings, pre-construction meetings and construction meetings with County and staff and/or its contractors, unless otherwise set forth in the Scope of Work or approved in writing by the County.

2.04 Work, labor, services, and materials to be furnished by Consultant shall fully comply with applicable Federal, state and local laws, rules, regulations, statutes, ordinances and directives related to the Consultant and/or the Work. In the event of any change in the applicable Federal, state and local laws, rules, regulations, statutes, ordinances and directives related to the Consultant and/or the Work for the Project, which occur after the Effective Date of the Contract, and which Consultant was not and should not reasonably have been aware of, which require changes to the Work that has already been completed by the Consultant, or require work outside the Scope of Work, then the Consultant and the County shall attempt to agree in writing on the required modifications to the Scope of Work and an equitable fee and time adjustment resulting from such additional Scope of Work. Conflicts between any applicable Federal, state and local laws, rules, regulations, statutes, ordinances and directives related to the Consultant and/or the Work shall be brought to the attention of the County by Consultant.

2.05 Consultant shall comply with all Federal laws, including but not limited to, the specific laws identified and attached hereto as **Exhibit "C"** and incorporated herein and made part of this contract. The Consultant shall require and ensure that its contractors and subcontractors comply with all applicable laws.

2.06 All work provided under this Agreement shall conform to and be in the format required by Federal and state funding agencies. Guidelines and requirements of the Federal Transit Administration, the Federal Highways Administration, the Federal Emergency Management Agency, the Environmental Protection Agency, the Texas Commission on Environmental Quality, and the Texas Department of Transportation as applicable to the project. Other Federal and local funding sources may impose additional and/or differing requirements. The project may utilize funding from the following: grants, ad valorem taxes; general obligation bonds, which all requirements for this contract must adhere to the requirements.

2.07 Effective January 1, 2020, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this contract and the Consultant agrees that the contract can be terminated if the Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

Article 3
Time for Performance

3.01 The Consultant shall complete the services called for in this Agreement as set forth in schedule specified in **Exhibit “A”** or as further modified in **Exhibit “F-*. ”** Consultant understands that time is of the essence to complete the services by the scheduled deadlines.

Article 4
Consultant Compensation

4.01 For and in consideration of the services rendered by the Consultant under Article 2, the County shall pay to the Consultant in accordance with its Fee Schedule in **Exhibit “A”** or as further modified in **Exhibit “F-*. ”**

Article 5
Time of Payment

5.01 Monthly payments shall be made based upon that portion of the work which has been completed. Consultant shall provide, no later than the last day of each calendar month a sworn statement to the County Engineer, setting forth the percentage of the services provided which were completed during such calendar month, the compensation due, Consultant’s hourly rates, if applicable, subcontractor invoices and the respective backup documentation, and any other documentation required to support compensation due. Said statement shall be accompanied by an affidavit signed by an officer or principal of the Consultant certifying that the work was performed, it was authorized by the County Engineer and that all information contained in the invoice being submitted is true and correct.

5.02 Consultant agrees to maintain, for a period of five (5) years, detailed time records identifying each person performing the services, the date or dates that the services were performed, the applicable hourly rates, the total amount billed for each person and the total amount billed for all persons, and shall provide such other details as may be requested by the County Auditor for verification purposes. The Consultant shall retain its records and shall keep same available for inspection during regular business hours by County officials.

5.03 The Consultant’s statement becomes due and payable within thirty (30) days after receipt and approval by County. The approval or payment shall not be considered to be evidence of performance by the Consultant to the point indicated by such statement or of receipt or acceptance by the County of the work covered by such statement.

Article 6
Compliance Standards

6.01 The Consultant agrees to perform the work hereunder in accordance with County’s road and bridge specifications or Texas Department of Transportation road and bridge specifications, Brazoria County Drainage Criteria Manual and other generally accepted standards applicable

thereto, and shall use that degree of care and skill commensurate with the Consultants profession to comply with all applicable state, Federal and local laws, ordinances, rules and regulations relating to the work to be performed hereunder and Consultant's performance.

Article 7
Procurement, Suspension and Debarment

7.01 The Consultant certifies by execution of this Agreement or Contract that it is not ineligible for such participation in Federal or state assistance programs. The Consultant further agrees to include this certification in all Agreements or Contracts between itself and any subcontractor in connection with the services performed under this Agreement or Contract. The Consultant also certifies that it will notify the County in writing if it is not in compliance with Federal or State assistance programs at any time during the term of this Agreement or Contract. The Consultant agrees to refund Brazoria County for any payments made to the Consultant that would have been properly payable or reimbursable from Federal or state funds but for the fact that such payment failed to comply with Federal or state assistance programs.

Article 8
Ownership of Documents, Copyright

8.01 The County shall be the absolute and unqualified owner of all drawings, preliminary layouts, electronic documents and drawings, record drawings, sketches, reports, and other documents completed or partially completed, mylar reproducibles, preliminary layouts, created, produced, developed, or prepared, pursuant to this Agreement, by the Consultant or its approved outside advisory or support consultants (collectively the "Documents") with the same force and effect as if the County prepared same.

8.02 Consultant shall deliver all Documents to County within thirty (30) days of the termination or upon completion of this Agreement, whichever occurs first.

8.03 The Consultant may retain one (1) set of reproducible copies of such documents and such copies shall be for the Consultant's sole use in preparation of studies or reports for Brazoria County only. The Consultant is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, without the prior express written permission of the County.

8.04 County shall be the owner of all intellectual property rights of the services rendered hereunder including all rights of copyright therein.

Article 9
Public Contact

9.01 Contact with the news media, citizens of Brazoria County, the State of Texas or other governmental agencies shall be the responsibility of the County. Under no circumstances shall the Consultant release any material or information developed in the performance of its services hereunder without the express prior written permission of the County.

Article 10
Consultant's Insurance Requirements

10.01 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (except Professional Liability which is on a Claims Made policy) from such companies having Best rating of V/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits set forth on **Exhibit "B."**

10.02 County shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All liability policies including Workers' Compensation written on behalf of Consultant shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.03 If required coverage is written on a claims-made basis, Consultant represents that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

Article 11
Indemnification

11.01 THE CONSULTANT SHALL INDEMNIFY THE COUNTY FROM AND AGAINST CLAIMS AND LIABILITY, PERFORMED UNDER THIS CONTRACT WHICH RESULT FROM NEGLIGENT ACT, ERROR, OR OMISSION OF THE CONSULTANT OR OF ANY PERSON EMPLOYED BY THE CONSULTANT. THE CONSULTANT SHALL IN PROPORTION OF CONSULTANT'S LIABILITY BE RESPONSIBLE TO REIMBURSE THE COUNTY FOR REASONABLE EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, TO THE EXTENT ARISING OUT OF THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF THE CONSULTANT, ITS AGENTS, OR EMPLOYEES.

11.02 CONSULTANTS DUTY TO INDEMNIFY COUNTY SHALL AS DESCRIBED ABOVE BE ABSOLUTE. IT SHALL NOT ABATE OR END BY REASON OF THE EXPIRATION OR TERMINATION OF THIS AGREEMENT UNLESS OTHERWISE AGREED BY COUNTY IN WRITING. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ALL SUCH MATTERS NO MATTER WHEN THEY ARISE.

Article 12
Dispute Resolution

12.01 In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, County and Consultant agree to submit the dispute to mediation.

12.02 All expenses associated with mediation shall be shared fifty (50) percent by each party.

12.03 The requirement to seek mediation shall be a condition required before filing an action at law or in equity, unless to do so would prevent either party from seeking relief in a court of law in equity under any applicable statutes of limitation.

Article 13
Termination

13.01 The County may terminate this Agreement at any time by notice in writing to the Consultant. Upon receipt of such notice, the Consultant shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Consultant shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The County shall then pay the Consultant that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, electronic data files, drawings and specifications of any kind prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated.

Article 14
Notice

14.01 Any notice permitted or required to be given to the County hereunder may be given by hand-delivery or certified United States mail, postage prepaid, return receipt requested addressed to:

County:

Brazoria County Engineer
451 N. Velasco, Suite 230
Angleton, Texas 77515
ATTN: Matthew Hanks, JD, PE
Email: matth@brazoria-county.com
Phone: 979-864-1265

Consultant:

DE Corp.
3100 West Alabama
Houston, Texas 77227
ATTN: Christopher W. Sallese, PMP
Email: chris.sallese@DECORP.COM
Phone: 713-527-6324

14.02 Such notice shall be deemed given upon receipt of hand-delivery or, if mailed, three days after the date of deposit of the notice in the United States mail as aforesaid.

Article 15
Successors and Assigns

15.01 Neither the County nor the Consultant shall assign, sublet, or transfer its or his interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

Article 16
Applicable Law

16.01 The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Brazoria County, Texas for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in this Agreement shall be construed to waive the County's sovereign immunity.

Article 17
Modifications

17.01 This instrument contains the entire Agreement between the parties related to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties.

Article 18
Authority of County Engineer

18.01 The County Engineer shall decide any and all questions which may arise as to the interpretation of this Agreement and all questions as to the acceptable fulfillment of this Agreement by the Consultant. His decision shall be final. It is mutually agreed by both parties that the County Engineer shall act as referee in all questions arising under the terms of this Agreement between the parties hereto and that the decisions of the County Engineer in such shall be final and binding alike on both parties hereto. But, nothing contained in this Article shall be construed to authorize the County Engineer to alter, vary or amend any of the terms or provisions of this Agreement.

Article 19
Severability

19.01 If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Article 20
Merger

20.01 The Parties agree that this Agreement contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.

Article 21
Boycott Verification

21.01 This verification is required pursuant to Sections 808, 809, 2271, and 2274 (87(R) Senate Bill 13 and 19 versions) of the Texas Government Code:

Definitions:

1. Per Government Code Chapter 808, "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purpose
2. Per Government Code Chapter 809, "Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:
 - (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or
 - (B) does business with a company described by Paragraph (A).
3. Per Government Code Chapter 2274 (87(R) Senate Bill 19), "Discriminate against a firearm entity or firearm trade association":
 - (A) means, with respect to the entity or association, to:
 - (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;
 - (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or
 - (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association;
4. "Company" has the meaning assigned by Texas Government Code Sections 808.001(2), 809.001(2), and 2274.001(2) (87(R) Senate Bill 19).

This verification is only required for a contract that is between a governmental entity and a company with 10 or more full-time employees; and has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. If your contract value or number of employees does not reach that threshold, please provide a written certification of the contract amount and number of employees.

By signing this contract consultant agrees to the following:

- (A) does not boycott Israel currently;
- (B) will not boycott Israel during the term of the contract the named Company, business or individual with Brazoria County Texas, Texas;
- (C) does not boycott energy companies currently;
- (D) will not boycott energy companies during the term of the contract the named Company, business or individual with Brazoria County, Texas;
- (E) does not discriminate against a firearm entity of firearm trade association currently; and
- (F) will not discriminate against a firearm entity of firearm trade association during the term of the contract the named Company, business or individual with Brazoria County, Texas

21.02 All requirements of Subtitle A, Title 8 Government Code Chapter 808, apply to this contract and the Consultant, by signing below, hereby verifies its understanding of the exemptions contained therein.

21.03 Consultant agrees that the contract can be terminated if the Consultant knowingly or intentionally fails to comply with a requirement of this subchapter.

Article 22

Attachments

- 22.01 The following attachments are a part of this Agreement:
- | | |
|-----------|--|
| Exhibit A | Scope of Work, Fee Schedule and Project Schedule |
| Exhibit B | County's minimum insurance requirements |
| Exhibit C | Compliance with Laws |
| Exhibit D | Certificate of Interested Parties |
| Exhibit E | Conflict of Interest Disclosure |
| Exhibit F | Contract Amendments (As Needed) |

Article 23
Execution

23.01 The County executes this Agreement by and through the County Judge acting pursuant to Order of the Commissioners Court of Brazoria County, Texas, so authorizing. This Agreement shall not become effective until executed by all Parties hereto.

Brazoria County, Texas

DE Corp.

a Texas company

By: 

L.M. (Matt) Sebesta, Jr

County Judge

Date: 08/14/2023

By: Christopher W. Sallese, PMP Digitally signed by Christopher W. Sallese, PMP
Date: 2023.08.10 11:23:30 -05'00'

Name: Christopher W. Sallese, PMP

Title: Division Chief, Special Projects

Date: _____

EXHIBIT "A"
SCOPE OF WORK, FEE SCHEDULE AND PROJECT SCHEDULE

INSERT PROPOSAL AND SCHEDULE



DE Corp.
3100 West Alabama, Houston, TX 77098
P.O. BOX 22292 Houston, Texas 77227
(713) 520-9570

July 31, 2023

Brazoria County
Attn: Susan Serrano
111 E. Locust Street
Angleton, TX 77515

RE: Brazoria County Dune Restoration Project: Phase 1 Proposal

The DEC Team is pleased to submit this proposal to perform professional services for the Brazoria County Dune Restoration Project. The purpose of this proposal is to address damages along 4600 feet of the natural dune system that are adjacent to the Bluewater Highway. This phase 1 proposal includes coordination with regulatory agencies, execution of survey investigations, the development and review of alternatives, preliminary engineering analysis for design, and cost estimates for repair of the natural dune system.

Background: The storm surge associated with Hurricane Nicolas inundated the coastal areas along Follets Island causing damage to the natural sand dune system and the mulch dune system Brazoria County constructed to protect the Bluewater Highway. Brazoria County is concerned that the damaged dune system will not be able to protect the highway from future surge events.

Project Description: DEC plans on executing this work effort in two phases.

Phase 1: DEC will assess the damaged dunes, execute topographic and right of way surveys for the existing Bluewater Highway footprint, conduct environmental field investigations, and begin coordination with the regulatory agencies to start the development and review of alternatives. This effort will include limited preliminary engineering analysis for design, and a rough order of magnitude cost estimates for each alternative that is viable for the repair of the natural dune system. (Figure 1) Phase 1 will include a presentation of the alternatives for the County to select the alternative that will be fully developed in phase 2.

Phase 2:

Phase 2 is the development of final plans, specifications, and cost estimates, bid sheet, bid support, the acquisition of any required permits, and construction phases services. The phase 2 scope of work and cost proposal will be presented to the County once an alternative is selected.



Figure 1 Proposed Location for the Dune Restoration- Approximately 41 Acres

Scope of Services:

Phase 1: Preliminary Engineering and Alternatives Analysis

The preliminary engineering services includes a survey to verify the easement/right of way for the Bluewater Highway within the project area. Topographic surveys will also be executed from the centerline of the highway to the start of the vegetation line on the beach. The survey will delineate the existing shoreline (at the time of the survey), the vegetation line, and the limits of the Bluewater Highway within the project area.

The environmental team will conduct field investigations along the proposed footprint of the project to determine if there are any environmentally sensitive areas (wetlands, etc) that will need to be avoided. The team will also start early coordination with the regulatory agencies to determine what structures maybe allowable in order to begin the development of alternatives.

Once the survey and the environmental investigations are complete, the design team will develop 2-3 potential alternatives. Each alternative will consist of a preliminary drawing and exhibits and a cost estimate. Alternatives will then be coordinated with the County, GLO, and other regulatory agencies to determine the alternative that best suits the desired project end state. Once an alternative is selected, the design team will finalize the sketches, cost estimates, and develop the scope of work for phase 2.

Items provided by Brazoria County:

- As-built drawings and geotechnical report for the post-Hurricane Ike repair of the Bluewater Highway

Phase 2 will consist of the production of final design plans, specifications, and cost estimates in order to prepare a bid package for the County. If additional environmental permits are permitted, the applications will be completed and submitted during this phase.

Additional Services:

Survey: Survey and Mapping Inc (SAM) will provide all the required survey support for this project. Survey services will include delineation of all key features required for the survey and topographic data. (See Appendix A for their scope of work and proposal)

Environmental: Berg-Oliver will be providing the following environmental services during phase 1.

- Waters of the U.S. determination
- Threatened and endangered species habitat assessment
- Assistance with the development of the alternatives for evaluation
- Agency coordination

The intent of these services is to ensure all project alternatives developed are assessed in accordance with the governing state and federal environmental regulations.
(See Appendix B for their scope of work and proposal)

Assumptions:

Preliminary engineering services will begin upon NTP

Alternative's analysis will begin once survey operations are complete

Project delays due to weather will be coordinated with the County

Not included in proposed fees:

Final plans, specifications, and estimates

Bid phase services

Construction phase services

Environmental permitting

Proposed Fees:

	Fee	Profit (10%)	Total
Basic Preliminary Engineering Services (DEC)	\$67,500.00	\$7,500.00	\$75,000.00
Environmental Services (Berg-Oliver)	\$49,315.00	\$5,035.00	\$54,350.00
Survey and Mapping Services (SAM)	\$48,060.00	\$5,340.00	\$53,400.00
Total	\$164,875.00	\$17,875.00	

Grand Total with Profit **\$182,750.00**

Survey services are lump sum. Engineering and environmental service fees will be performed on a time and materials basis. Any funds remaining at the conclusion of Phase 1 will be carried over to Phase 2 and be deducted from the fee proposal. The fees listed above will not be exceeded without authorization from the County

Schedule:

Kick-off meeting with the County and Regulatory agencies	Within 2 weeks of NTP
Survey field investigations	Within 2 weeks of NTP
Survey Data to the engineer	Within 4 weeks of the completion of the field investigations
Alternatives Development and development of preliminary drawings, exhibits, and cost estimates	Within 6 weeks from delivery of the survey data
Alternative analysis briefing	2 weeks from the completion of alternatives development

An updated schedule will be provided to the County in P6 at the kickoff meeting.

We appreciate the opportunity to provide this proposal for professional services.

Respectfully,

Christopher W. Sallese

Christopher W. Sallese, PMP

Division Chief, Special Projects

DE Corp

3100 West Alabama

Houston, TX 77098

713-527-6324

Chris.Sallese@DECorp.com

Attachments:

A: SAM Proposal

B: Berg-Oliver Proposal

Attachment A



Delivery Method:

Email: chris.sallese@decorp.com

July 25, 2023

Chris Sallese, PMP
Division Manager
DEC Engineering
3100 West Alabama St.
Houston, Texas 77098

**RE: Brazoria County Dune Restoration Aerial LiDAR Survey and Right-of-Way Survey
Freeport, TX
SAM Project Number: 1023080513**

Chris,

SAM Companies are pleased to provide you with this proposal for professional digital mapping services in connection with the above-referenced project. Based upon the request for proposal and the information provided to SAM, we have prepared the attached proposed Scope of Services, Fee Estimate and Schedule.

These services will be performed in accordance with our terms and conditions listed on page 4 of this document. After you have reviewed the attached proposed Scope of Services, associated fees and schedule, please do not hesitate to call if you have any questions or comments. Again, thank you for the opportunity to provide this proposal. We are looking forward to working with you on this project.

Sincerely,

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

Robert Hertwig, CP
Surveying And Mapping, LLC
Senior Project Manager

Cc: Greg Schmitt, RPLS, LSLs Director, Federal Market / SAM
Don Zdancewicz, RPLS, Austin Survey Department Manager

SAM COMPANIES

11111 Katy Freeway / Suite 200 / Houston, TX 77079
713-973-5100 Office / 844-273-5392 Fax / TBPELS #10064300

sam.biz



Brazoria County Dune Restoration Project



Exhibit "A" – 41 ACRES

Project Overview

Surveying And Mapping, LLC. (SAM) proposes to provide the following digital mapping services to DEC Engineering (Client) to aid the development of the project located 12 miles northeast of Freeport, TX along the shoreline of the Gulf of Mexico as further illustrated in Exhibit "A".

Assumptions

The following assumptions were made for the preparation of this Scope of Services. If these assumptions do not prove correct, a modification to the scope and budget for this project may be required.

- Deliverables will include the area outlined in red on Exhibit A.
- Every effort will be made to acquire the airborne data as soon as possible after receiving notice to proceed. However, acquisition scheduling may be affected by sensor availability, weather conditions unfavorable to LiDAR mapping and panel placement.
- Areas fully obscured from the airborne LiDAR will not be shown. Obscured areas are part of the projects ground surface or target features where mapping/identification may not be able to be done from remotely sensed data to being visually blocked from the sensors line of site by vegetation or a man-made feature and could require traditional ground surveying to properly map to the project accuracy standards or verify the features. Certain crops (beans, corn, and sugarcane as well as others) and very dense vegetation such as can be found on stream and river banks, rainforests, swamps, unmaintained fields or other dense forests can cause obscured areas in the project.
- All horizontal and vertical coordinates will be based on control panels set and surveyed by SAM, LLC.



- SAM will provide a minimum of 5 survey control point aerial panel locations.
- The project horizontal survey datum will be based on Texas State Plane Coordinates NAD83 (2011) Texas South Central Zone 4204, and vertical North American Vertical Datum of 1988 (NAVD88) Geoid 18.
- SAM will provide 10 Ground truthing shots to be taken around the project area to confirm the overall vertical data reliability.
- No subsurface hydrographic or utilities will be located by SAM.
- No boundary survey will be performed by SAM.
- No special project specific training will be required to perform this work.
- Ortho imagery will be collected, post processed and delivered as part of this scope of services.
- Client will provide Right of Entry and access to any private properties as required to perform the services described herein, and if necessary gain permission of adjoining properties.
- Survey Feature Codes will be shown as per SAM current Feature Library and Line Styles.
- SAM will not be working in any hazardous or contaminated areas.
- All work will be performed during daytime hours.
- The Client will be the liaison for the SAM field crews to access the Project Work Area.
- SAM will be notified, prior to mobilizing to the Project, of any special requirements for access and the performance of the work.
- SAM personnel will have unrestricted access to the work areas on a ten (10) hour per day basis for each day approved to perform work.
- No special monument caps will be required for the project control.
- No field surveying for topography, planimetrics or trees, in addition to the Aerial Mapping will be provided as part of this proposal.

Scope of Services – Brazoria County Dune Restoration Aerial LiDAR Survey

LiDAR and Imagery Acquisition and Calibration

SAM will set and survey up to 5 aerial panels to be used to calibrate the data. Once the panels are set we will schedule the flight based on a clear weather window. Based on our extensive experience and commitment to quality, our proposed approach provides for a minimum of 50 LiDAR points of per square meter and will simultaneously collect color imagery suitable to generate 3-inch pixel GSD resolution orthoimagery. SAM plans to use a Riegl VUX system or comparable system mounted on a Unmanned Aerial System (UAS). SAM will mobilize to the site to set and run an airborne GPS base station during flight operations. SAM will acquire the LiDAR data in one day. After the acquisition phase, the data will be post-processed and reviewed to confirm complete data acquisition coverage. Any seams, holes, or other unwanted artifacts can be quickly identified to assess the need for any re-flights. The “.las” data will then calibrated into the appropriate survey datum provided by the client.

LiDAR Data Classification and Feature Extraction

Once the positional accuracy check is complete, experienced LiDAR technicians will execute and complete the LiDAR classification and feature extraction. This begins by performing an automated filtering and classification process. Automated filtering of the data is the first process necessary to complete the bare earth ground processing and prepare the topographic mapping. The next task involves digitizing or performing feature extraction of the planimetric and topographic features. Technicians will locate and extract topographic features visible to the airborne sensor. Existing planimetric features, topographic key points and break lines will be digitized into the CAD environment. Quality Control will be implemented by a senior Photogrammetrist/Project Lead to ensure all visible features are shown and vectorized correctly before creating the deliverables. The following features will be compiled in an Autodesk Civil3D 2018 CAD file per the client's specifications:



1. One foot contours based on the extracted LiDAR keypoints and breaklines.
3. Outlines of all visible structures.
4. Limits (edge of pavement or roadway) for all paved and apparent un-paved roadways and parking areas.

Orthophoto Processing

The digital orthophotos will be processed to have a 3-inch ground sample distance (GSD) resolution. The LiDAR bare earth filtered dataset will be used to rectify the aerial imagery. The digital orthophotos will be mosaicked and checked to insure color, tone and contrast is optimized across the project area. Every effort will be made to balance the contrast of the imagery however; there may be some slight variations in image contrast. There may also be some upper level cloud shadows on the ground within the imagery. Mosaic lines will be manually placed and hidden along linear features to avoid cutting through buildings and other above ground structures. Individual tiles will be cut to limit the file size to less than 100 MB. Imagery will be provided in TIF and compressed ECW formats.

Right-of-Way Survey

SAM will perform the following Survey services:

- SAM shall establish four (4) primary survey control points. The primary survey control points will be set in locations that will likely be undisturbed by construction or State/County maintenance. The project control will be placed on horizontal and vertical datums [NAD83/2011/NAVD88 values (Texas Coordinate System, Central Zone)]. All coordinates will be provided in Grid coordinates. A surface adjustment factor to be used on the project will be discussed with the Client and agreed upon before the start of survey work. Elevations will be derived from GPS observations using Geoid 2018 model.
- Obtain current deeds and/or plats from Brazoria County Clerk, roadway plans from Brazoria County and/or TxDOT, and other existing survey information that will show the existing right-of-way.
- Review and analyze the current recorded deeds and/or plats, adjoining deeds, plats and right-of-way information.
- Field locate all the subject property corner markers, fences, and/or other items that will allow SAM to construct the boundaries and rights-of-way of the existing Bluewater Highway for the length of the project.

Project Deliverables

SAM will provide the following project deliverables:

- AutoCAD Civil3D 2023 drawing that includes planimetrics, break lines, LiDAR key points and 1ft contours of the survey area shown in red on Exhibit "A".
- Ground classified LiDAR tiles of the area shown in red on Exhibit "A".
- Ortho-rectified 3" pixel color imagery tiles of the area shown in red on Exhibit "A".
- Airborne LiDAR calibration report and associated field notes
- Survey points in .TXT and/or .CSV formats
- AutoCAD Civil3D 2023 drawing file of the right-of-way.

Project Schedule

Based on a written agreement and notice to proceed, we will schedule the airborne acquisition based on clear weather and sensor availability and communicate the proposed date to the client. Acquisition should be complete within 2 weeks or less following NTP, weather permitting. Final deliverables will be completed 2 weeks after receipt of all field data. Weather conditions that are conducive to flight data will be paramount to the successful



completion of these services and changing weather conditions may lengthen the schedule. SAM's Project Manager will keep the client apprised of the progress and any delays that occur.

The Right-of-Way Survey will begin within one (1) week of notice to proceed. Final deliverables of the Right-of-Way survey will be provided within here (3) weeks of notice to proceed.

Fees

SAM will provide the services described herein on a Time and Materials basis, per the current Contract Rate Schedule (or attached rate schedule):

Aerial LiDAR Survey: \$26,280

Right-of-Way Survey: \$27,120

TOTAL FEE: \$53,400.00

Terms and Conditions:

1. Access To Site - Unless otherwise stated, SAM, LLC will have access to the project site for activities necessary for the performance of the services. SAM, LLC will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage.
2. Ownership Of Documents - Client acknowledges that all original papers, documents, maps, surveys, digital data and other work product and copies thereof, produced by SAM, LLC pursuant to this Agreement shall remain the property of SAM, LLC, except documents which are to be filed with public agencies. Client further acknowledges that Client's right to utilize the services and work product performed pursuant to this Agreement will continue only so long as Client is not in default pursuant to the terms and conditions of this Agreement and Client has performed all obligations under this Agreement.
3. Copyright - The parties hereto agree that all protections of the United States and Texas state copyright laws shall be applicable to the work product to the benefit of SAM, LLC, including common law and statutory law, whether or not any copyright for such work product actually is registered, and without regard to whether or not such copyright actually applies to such work product.
4. Invoices - Invoices for fees and all other charges will be submitted monthly for all services rendered as the work progresses, and the net amount shall be due and payable as of the date of the invoice at SAM, LLC's office in Austin, Travis County, Texas.
5. Client's Obligation to Pay - Client's obligation to pay is solely that of Client, and the acts or omissions of any third party shall not affect that obligation. All sums due and not received shall be construed as past due. To cover the costs of collection, all past-due amounts will incur a late charge of one and one-half percent (1 ½ %) per month until paid. The Client shall pay all attorney's fees or court costs incurred by SAM, LLC in collecting any past-due amounts. In the event that Client fails to pay SAM, LLC within thirty (30) days after invoices are rendered, then Client agrees that SAM, LLC shall have the right to stop or suspend work and consider the non-payment as grounds for a total breach of this Agreement.
6. Termination Of Services - This Agreement may be terminated by either party upon five (5) days' written notice, by mutual consent or in the event of persistent failures of performance of material terms and



conditions of this Agreement by the other party through no fault of the terminating party. SAM, LLC shall then be paid for the services completed up to the time of the termination date based upon the attached Rate Schedule.

7. **Dispute Resolution** – If a dispute arises out of or in connection with or relation to this Agreement, the parties shall endeavor reasonably to settle the dispute through direct discussions. If a dispute is not resolved through direct discussions, claims or disputes in connection with the services provided under this Agreement between Client and SAM, LLC shall be submitted to non-binding mediation in Austin, Travis County, Texas. In the event non-binding mediation does not result in resolution of the claim or dispute, the dispute shall be resolved by litigation in the courts of the state in which the services are performed, and the parties hereby consent and submit to exclusive venue in, and the exclusive jurisdiction of, such courts and waive all rights to proceed in any other venue or jurisdiction. Client and SAM, LLC agree to include a similar dispute resolution agreement with all contractors, subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties. The substantially prevailing party in any litigation arising out of or relating to this Agreement shall be entitled to recover from the other party reasonable attorneys' fees, costs, and expenses incurred by the prevailing party.

8. **Governing Law** - This Agreement shall be construed and enforced in accordance with the laws of Texas.

9. **Indemnification** - The Client shall, to the fullest extent permitted by law, indemnify and hold harmless SAM, LLC, its officers, directors, members, managers, employees, agents, insurers and subconsultants (collectively "SAM Parties") from and against all damages, liabilities, penalties, fees, claims, suits and costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance by any of the SAM Parties of the services under this Agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of SAM, LLC.

10. **Limitation Of Liability** - In recognition of the relative risks, rewards and benefits of the project to both the Client and SAM, LLC, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, total liability to the Client for any and all injuries, claims, suits, costs, liabilities, fees, losses, expenses, penalties, fines, damages or claim expenses arising out of this Agreement from any cause or causes shall not exceed the total fee paid by the Client to SAM, LLC, excluding any sales tax, for the services rendered. Such causes include, but are not limited to, SAM, LLC's negligence, errors, omissions, strict liability, breach of contract or breach of warranty. Except for the indemnification provisions provided herein, neither party shall be liable to the other for consequential, incidental, indirect, punitive or special damages (including loss of profits, data, business or goodwill), regardless of the legal theory advanced or of any notice given as to the likelihood of such damages.

11. **Authority** - Client affirmatively represents and states that he/she is authorized to enter into this Agreement, either as the owner or an officer of DEC Engineering, or as Company's duly authorized agent, trustee or receiver for the purpose of entering into this Agreement.

12. **Professional Services** - All engineering and surveying services are regulated under the Texas Board of Professional Engineers and Land Surveyors.



13. Use of Work Product - SAM, LLC acknowledges that Client is requesting services to be performed under the applicable work order(s) for the purpose of providing such information to other parties including, but not limited to, clients, customers, governmental entities and other interested parties. Client agrees that the work product prepared by SAM, LLC may not be altered in any way except for the addition of page numbers or exhibit captions necessary to incorporate that work product into other documents. SAM, LLC agrees to provide copies of the work product mutually agreed upon by both parties described in the work orders hereof.

14. Subpoenas or Requests for Information - In the event SAM, LLC or any of its personnel are requested or authorized by the Client or third parties with which the Client is involved in a claim or dispute or, are required by government regulation, subpoena, or other legal process, to produce any information or our personnel as witnesses with respect to the services performed by SAM, LLC hereunder, the Client will, so long as neither SAM, LLC nor its personnel are a party to the proceeding in which the information or personnel are sought, reimburse SAM, LLC for its professional time and expenses, as well as the actual fees and expenses of SAM, LLC's counsel, incurred in responding to such requests.

Surveying And Mapping, LLC (SAM, LLC)

Signature _____ Date: _____
Printed Name _____
Title _____

DEC Engineering

Signature _____ Date _____
Printed Name _____
Title _____

Attachment B



BERG ♦ OLIVER ASSOCIATES

Environmental Science & Land Use Consultants
14701 St. Mary's Lane, Suite 400, Houston, Texas 77079
(281) 589-0898 fax: (281) 589-0007
Houston ♦ Dallas/ Fort Worth ♦ www.bergoliver.com

November 5, 2021
(Revised July 21, 2023)

Dannenbaum Engineering Corporation
Mr. Chris Sallèse
3100 West Alabama
Houston, Texas 77098

Via email: Chris.Sallèse@dannenbaum.com

Re: Proposal for: Follet's Island Dune Restoration Project
in Brazoria County, Texas
BOA034-12415N-ES

Dear Mr. Sallèse,

The following proposal is provided to Dannenbaum Engineering Corporation (the "Client") on behalf of Brazoria County Engineering for environmental services for the proposed dune restoration project located on approximately 1 mile of Follet's Island, in Brazoria County, Texas. Berg ♦ Oliver Associates ("Berg ♦ Oliver" or "BOA") will provide special attention to complete the work in a timely and professional manner. We will begin the assessment upon your acceptance and execution of this proposal. Attachment A describes each of these services.

Berg ♦ Oliver is proposing to provide the following services: Task I) Initial ISA (Limited Phase 1 Environmental Site Assessment) (**H-P1**), Task II) Waters of the U.S. (WOTUS) Delineation (**N-WD**), Task III) Threatened & Endangered Species Survey (**N-TE**), Task IV) Cultural Resources Pedestrian Survey (**N-ARPS**) and Task V) Agency Coordination (**AC**), and Task VI) Project Management (Meetings) (**N-PM**). Attachment A describes these scopes in detail.

PROJECT SCHEDULE

Tasks I-III are anticipated to be completed within 30 days of the receipt of an executed proposal and suitable boundary map by Berg ♦ Oliver. Task IV anticipated to be completed within 60 days of the receipt of an executed proposal and suitable boundary map by Berg ♦ Oliver. Task V and VI will be on-going throughout the concept design phase of the project. Completion of Task V and VI is anticipated 180 days from the notice to proceed. The project completion schedule is the goal of all parties; it does not, however, reflect unusual delays due to forces beyond the control of Berg ♦ Oliver and/or modifications to the scope of work based upon actual findings or additional requests by Dannenbaum Engineering Corporation, its agents, or governmental agency.

RIGHT OF ENTRY

Unless otherwise stated, it is assumed that the client has the authority to enter the property for purposes of conducting environmental assessments and herein grants that authority to Berg ♦ Oliver.

Berg ♦ Oliver Associates, Inc.
BOA034-12415N
July 21, 2023

BASIC COMPENSATION AND METHOD OF PAYMENT

Berg ♦ Oliver proposes to provide the environmental services described in Attachment A to Dannenbaum Engineering Corporation for the following lump sum amounts:

TASK I: INITIAL ISA (LIMITED PHASE 1 ENVIRONMENTAL SITE ASSESSMENT) \$3,450.00

TASK II: WATERS OF THE U.S. (WOTUS) DELINEATION.....\$10,400.00

TASK III) THREATENED & ENDANGERED SPECIES SURVEY \$4,000.00

TASK IV) CULTURAL RESOURCES PEDESTRIAN SURVEY.....\$22,750.00*

TASK V) AGENCY COORDINATION.....\$4,100.00

TASK VI: PROJECT MANAGEMENT (MEETINGS).....\$7,400.00

GRAND TOTAL: \$50,350.00

*If archeological sites are encountered during the survey, a change order will be provided to the client for recording, laboratory processing and storage fees required by the state. Each site will be recorded for an additional fee not to exceed **\$3,500 per site** for prehistoric/protohistoric sites or **\$4,500 per site** for historic-age archeological sites. Note that these estimated fees apply to small to moderate-sized sites that can be recorded in approximately a half day or less. Large, deep, or unusually complex sites may require additional time to record and incur additional charges.

This cost estimate is valid for a period of six (6) months beyond the date shown below. After six (6) months, cost estimates may change due to fluctuations in fuel, subcontractors, and other sources required to complete the project.

Berg ♦ Oliver will begin the work described herein upon the execution of this proposal by the client. Payment of all invoices is expected within thirty (30) days of the client's receipt of the invoice submitted by Berg ♦ Oliver.

CONFIDENTIALITY OF ASSESSMENT

The assessment and all related work and services of Berg ♦ Oliver Associates are confidential. Berg ♦ Oliver Associates is hereby employed by Dannenbaum Engineering Corporation pursuant to this contract. Under such contract relationship, all correspondence, written or oral, which relates to the findings of this study are, to the extent permitted by law, strictly confidential between the parties hereto, unless Berg ♦ Oliver Associates receives a written request from the client to offer the results of this study to a third party not a part of this agreement/proposal. Environmental assessments may occasionally uncover extremely sensitive findings. It is the responsibility of Berg ♦ Oliver Associates to report these findings to the authorizing client and to no other party.

PROPOSAL ACCEPTANCE AND EXECUTION

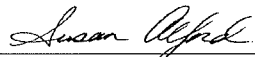
Berg ♦ Oliver shall be authorized to commence the Services upon execution of this Agreement. Client and Berg ♦ Oliver agree that this Agreement and attachments herein incorporated by reference (the "Agreement") constitute the entire agreement between them relating to this proposal. The signatory below also represents that the client has, or has secured, the authority to grant permission for Berg ♦ Oliver personnel to enter the subject property as necessary to conduct these assessments and that such permission is granted to Berg ♦ Oliver by the execution of this agreement/proposal. If the client is a Corporation or a Partnership, then the signature below will also represent the personal guarantee of the individual signing on behalf of the Client.

IN WITNESS THEREOF, Dannenbaum Engineering Corporation and Berg ♦ Oliver Associates have accepted and executed this proposal for environmental services on _____.

DANNENBAUM ENGINEERING CORPORATION

By: _____
Authorized Signature

BERG ♦ OLIVER ASSOCIATES

By: 
Susan Alford
President

Attachments:

- A – Scope of Work
- B – Personnel Rate Sheet
- C – General Conditions for Services

ATTACHMENT A

TASK I PHASE I SITE ASSESSMENT

The Phase I Environmental Site Assessment (Phase I) will be performed in accordance with ASTM standard practice E 1527-2021, Environmental Site Assessments: Phase I Environmental Site Assessments.

This practice is intended to permit you to satisfy one of the requirements to qualify for the innocent landowner defense to CERCLA (Comprehensive Environmental Response, Compensation and Liability Act) liability: that is, the practices that constitute "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice" as defined in 42 USC '9601§(35)(B).

SITE LOCATION

The site location is reported to be located approximately 1 mile of Follet's Island, in Brazoria County, Texas. **The Client will need to furnish Berg ♦ Oliver with the following items in order to begin the Phase I ESA process:**

- **A survey map of the site;**
- **Metes and bounds or legal description; and**
- **Contact name of the current owner or owner's representative to complete an owner/occupant inquiry.**

These items should show or describe the exact location of the subject property to be assessed.

SCOPE OF WORK

The objective of the Phase I is to identify, to the extent feasible under the processes prescribed in ASTM E 1527-2021, the potential for recognized environmental conditions; that is, the presence or likely presence of any hazardous substances or petroleum products on the property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into the ground, groundwater, or surface water of the property. The Phase I will have four components, described as follows:

1. **Records Review:** Obtain and review records that will help identify recognized environmental conditions in connection with the property. Some records will pertain to properties within an additional approximate search distance in order to help assess the likelihood of potential problems from migrating substances.
2. **Site Reconnaissance:** Visually and physically inspect the property and adjoining properties, to the extent not obstructed by bodies of water, adjacent buildings, or other obstacles, for evidence of hazardous substances or petroleum products.
3. **Interviews:** a) Interview owners and occupants, or their designated representatives, to obtain information regarding current and historical uses of the property that may be related to environmental conditions. b) Conduct inquiries of local agency (e.g. fire department, health department) officials or staff members that may have knowledge or records of environmental conditions or incidents related to the property or the surrounding area. Interviews may in the form of personal contact, telephone contact, or written correspondence.
4. **Evaluation and Report Preparation:** The information gathered from the previous tasks

will be evaluated, and the findings will be presented in a report that describes, at minimum, site and vicinity descriptions, current and past uses of the property and adjoining properties, information from records reviews, information from site reconnaissance and interviews, conclusions and opinions of impacts, if any, of recognized environmental conditions. The report will also describe the methodologies used, and will include appropriate documentation and exhibits of information used to conduct the assessment. Recommendations for further study, if any, will be provided in a separate document.

INVESTIGATIVE WORK

Phase I investigative work includes, but may not be limited to, four basic tasks which are each comprised of several components. The details of these tasks are set forth below, listing the standard components of each. The ASTM E 1527-2021 standard prescribes a review of *reasonably ascertainable* information; that is, information that is publicly available, obtainable from its source within reasonable time and cost restraints, and practically reviewable. The availability of information will vary based on the location of a given site. Berg ♦ Oliver will attempt to review as much of the following information as is reasonably ascertainable for this project.

Task 1: Records Review

Standard Environmental Record Sources

Review documented environmental site listings from Federal and State regulatory agency database sources, including the following:

<u>Sources</u>	<u>Minimum Search Distance</u>
1. Federal NPL Facilities/Sites Lists	1.0 Mile Radius
2. Federal NPL-Delisted Sites List	0.5 Mile Radius
3. Federal CERCLIS List	0.5 Mile Radius
4. Federal NFRAP List	0.5 Mile Radius
5. Federal RCRA Corrupts List	1.0 Mile Radius
6. Federal RCRA TSD List	0.5 Mile Radius
7. Federal RCRA Generator List	Adjoining
8. Federal Finds List	0.5 Mile Radius
9. Federal ERNS List	Site Specific
10. State Priority List	1 Mile Radius
11. State IOP List	0.5 Mile Radius
12. State SWLF/CLI List	0.5 Mile Radius
13. State CLI List	0.5 Mile Radius
14. State LPST List	0.5 Mile Radius
15. State Registered UST/AST List	Adjoining
16. State PST List	0.5 Mile Radius
17. State TCEQ VCP List	0.5 Mile Radius
18. State Brownfield List	0.5 Mile Radius
19. Dry Cleaner List	0.5 Mile Radius
20. IHW List	Adjoining
21. Local Hazmat Spills	Site Specific

Documented regulatory agency sites located within the ASTM prescribed minimum search distance will be identified and plotted on a composite site map.

Physical Setting Sources

USGS Topographic Map(s) will be reviewed to determine site topography and surface drainage patterns of the site and the surrounding area. Current and past structures, roads, well installations, and other improvements will be evaluated, as well as other pertinent physical features such as streams or water bodies. **Federal Emergency Management Agency** floodplain map(s) will be evaluated to determine if the subject property lies within a known floodplain. The appropriate **Soil Survey** from the **USDA Natural Resource Conservation Service** will be reviewed to determine the site's soil conditions and general surface geology of the area. General descriptions will be made of the subsurface hydrogeology based on information from **USGS Groundwater Maps** or other sources.

Historical Use Information

Historical Aerial Photographs will be obtained from aerial photography firms having inventory of the subject area. The photographs will be reviewed to evaluate previous land use characteristics for the property and adjacent parcels. The photographs will also be checked for possible oil and gas exploration activities, surficial anomalies associated with waste ponds or dumps, and previous commercial and/or industrial activities. Under ASTM Standard E1527-21, review of title and judicial records for AULs falls under “*user’s responsibilities*” and may include Preliminary Title Reports, Title Commitments, Condition of Title, and Title Abstracts. If such information is not provided, Berg & Oliver may obtain a **Chain of Title** from the appropriate county clerk's records to identify site ownership for 50 years or more from the assessment date. To perform the title search, Berg & Oliver must be provided with a legal description of the property, and the costs and level of effort to obtain the information must meet the criteria for “*reasonably ascertainable*” information. The records will be reviewed to evaluate the potential for industrial or environmentally significant land use activities onsite, based on the identities of previous owners, and environmental liens or other AULs. This task will be subcontracted to a title search company.

Local **City Directories** and **Sanborn Fire Insurance Maps**, if available, will be reviewed for listings of the types of past structures or business operations that may have existed on the property. In addition, **Texas Railroad Commission Records** will be reviewed to determine if oil and/or gas exploration or production has occurred on the site. This information will be obtained from a **Regional Oil and Gas Survey Map** prepared by Tobin Research, Inc.

Task 2: Interviews and Agency Inquiries

Owner/Occupant Inquiry

Inquiries will be made of person(s) who may have knowledge of current or historical conditions associated with the subject property. One or more of the following individuals may be contacted for an interview: 1) **Current Owner** 2) **Owner's Representative** 3) **Occupants** or **Tenants** 4) **Adjacent Property Owners/Occupants**. Interviews may be conducted in person, by telephone, or by written correspondence in the form of an **Owner/Occupant Questionnaire**.

Local Agencies and/or Officials

Inquiries will be made of local agencies or officials that may have records of environmental conditions or incidents related to the subject property or adjacent properties. Such agencies may include the **Local Fire Department**, **Hazardous Materials Response**, **City/County Health Department**, **Local Pollution Control Agency**, or others deemed appropriate for the property, its location, or specific conditions.

Task 3: Additional Records Sources

In the event that site-specific conditions or standard information sources indicate a potential environmental condition(s) associated with the property, other selective files or records may be reviewed for additional information regarding such conditions. This information will be obtained at the discretion of Berg ♦ Oliver based on the findings of the investigation. Other typical sources include specific files from the **Texas Railroad Commission**, the **Texas Commission on Environmental Quality**, and the **Environmental Protection Agency**.

Task 4: Site Reconnaissance

General Site Setting

Site reconnaissance will be conducted to physically and visually inspect the property for indications of environmental conditions. Observations will be made of the **Current Site Usage, Adjacent Site Usage, Topography and Landscape, Structures, Roads, Improvements** and, to the extent practicable, **Potable Water Supply, Sewage Disposal System**, and other **Utility Installations**.

Interior and Exterior Observations

The property and any buildings or structures will be inspected for visual or physical evidence of hazardous substances or petroleum products. Exterior observations include, but are not limited to, pits, ponds, lagoons, stained soil or pavement, pools of liquid, strong odors, stressed vegetation, solid waste, waste water and associated discharge(s), above or below ground storage tanks, drums or containers, unidentified substances, wells, or septic systems. If interior inspection is required, observations will include those listed above, if applicable, as well as heating/cooling sources and fuels, stains or corrosion, drains and sumps, storage or treatment areas, and construction materials. Any listed, or non-listed, indicator of hazardous substances or petroleum products will be identified in the findings of the report.

TASK II **WOTUS DELINEATION** **SCOPE OF WORK**

The objective of the delineation is to evaluate and document any portion of the site to be classified as a "Jurisdictional Water of the United States" as defined in 33 CFR 328 and subject to U.S. Army Corps of Engineers (USACE) jurisdiction. The delineation will be conducted according to the 2010 Regional Supplement to the Corps of Engineers (USACE) Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (v.2). The recent guidance and supplemental criteria have altered the primary determining factors for identifying waters of the United States. However, compliance with these criteria requires a significant increase in the documentation and scientific evaluation.

Delineation work will consist of the following tasks:

Task 1: Review of NRCS Soil Surveys: Task 1 will include a review of previously published soil data published by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), to determine the types of surface soils expected to be confirmed by on-site soil analysis.

Task 2: Review of Aerial Photographs: Task 2 will include a review of historical aerial color and black/white photographic enlargements for selected years. Infrared color photographs will be analyzed for the presence of wetland signature color distortions. Information for all photographic interpretation will be compared to locate recurring sites where wetland signatures are present.

Task 3: Site Reconnaissance for WOTUS Indicators.: Task 3 will include inspecting the property under the field procedures outlined in the Corps of Engineers Wetland Delineation Manual – Technical Report Y-87-1 by the USACE.

Transects are required for tracts greater than 5 acres in size, unless negotiated with the USACE to forego transects based on the homogeneous landscape and habitat type. If necessary, transects will be performed across the property, perpendicular to the nearest watercourse. Samples of vegetation, soils, and hydrology indicators will be taken at each change in topography or vegetation. Vegetation samples will be evaluated and recorded at each sample area. Upland vegetation will be verified, for it is as significant as wetland vegetation in the determination process. Inspection of the property for evidence or lack of wetland hydrology will be performed at each sample area. Soil samples will be evaluated at each test site for their hydric and non-hydric characteristics. Non-hydric soils verify upland status and are as significant as hydric soils in the determination process.

Task 4: Demarcation of Wetland Areas: Subtask 4 will include the demarcation of the jurisdictional wetland areas and/or the ordinary high-water mark with Global Positioning System (GPS) survey using the USACE- Galveston District April 2016 Standard Operating Procedures for Jurisdictional Delineations using GPS and Geographic Information Systems (GIS) Tool and Technologies.

Task 5: Preparation of a Map Representing WOTUS Areas: Upon receipt of the RPLS or GPS wetland areas and the limits of the Jurisdictional Waters, information regarding the field location of the boundaries of all Section 10 and 404 waters/wetland limits within the property boundaries will be plotted on a scaled map. Each Jurisdictional area will be depicted with the following information: (1) size and shape; (2) surface area calculation (acres); and (3) combined total wetland and Jurisdictional Water area calculations for the entire subject tract. The final report submitted to the client from Berg ♦ Oliver will reflect the surveyed data from the RPLS or GPS survey showing the location of the wetlands.

Task 6: Report Preparation: Task 6 will include the preparation of a final report. Upon completion of the site reconnaissance, data translation, and map preparation, a report will be completed, two copies of which will be given to the client. The report will include a discussion of methodology used to delineate the tract, site findings, copies of all historical information reviewed, such as U.S. Geological Survey topographical maps, NRCS soil survey maps, aerial photographs, site photographs, USACE routine data sheets, and a WOTUS Delineation map.

TASK III **THREATENED AND ENDANGERED SPECIES ASSESSMENT WITH IPAC** **SCOPE OF WORK**

The objective of the Threatened and Endangered Species Assessment is to evaluate the potential for the existence of critical or irreplaceable habitats, which are considered protected under the Endangered Species Act of 1973 and subsequent amendments and listings. The following selected tasks will be considered for the project area:

1: Prepare and Review U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) Listing: The purpose of using iPAC is to initially determine if species listings, critical habitat, migratory birds or other natural resources listed by USFWS may be impacted by the project. Information included in the iPAC will be utilized to also identify potential conservation measures required for the minimization of impact to protected species.

2: Agency Consultation: IPaC system will be utilized to request an official letter from the USFWS field office.

3: Site Reconnaissance and Effect Determination. The biological aspects of the potential habitat will be physically reviewed and documented to determine if the habitat is desirable or reproductively useful to the specific species to make an effect determination.

4: Preparation of Letter of Findings and Recommendations. Following the completion of all research and site reconnaissance, a letter of findings and recommendations will be completed and forwarded to the client.

TASK IV

CULTURAL RESOURCE PEDESTRIAN SURVEY

The objective of the Historical, Cultural and Archeological Assessment is to evaluate the detectable existence of sites of significant historical, cultural and archeological public value on the subject site. If an applicant is requesting a permit from the U.S. Army Corps of Engineers (USACE) to fill jurisdictional Waters of the U.S., the USACE requires that the Texas Historical Commission (THC) and USACE staff archeologist review the proposed project. **The USACE cannot issue a permit to fill Waters of the U.S. without the THC and USACE staff archeologist's final approval.** Based upon the soil conditions and potential for finding cultural resources, the USACE under Section 106 of the Historic Preservation Act often requires an applicant to conduct an Archeological Cultural Resource Pedestrian Survey to determine if cultural resources or historical structures are present on the property. Additionally, if the project will involve political subdivisions of the State of Texas facilities or properties, such as, Municipal Utility Districts (MUD), schools, counties, etc. then compliance with the Antiquities Code of Texas is required. If cultural resources are found, Berg ♦ Oliver and the archeologist will coordinate with the client to discuss project options. The preliminary cultural resources survey will be conducted by Horizon Environmental Services of Austin, Texas. A physical investigation for the presence of historical, cultural, or archeological indicators will be performed.

Scope of Services

The cultural resources study would consist of desktop archival research, an intensive archeological field survey, and production of a report suitable for review by the SHPO in accordance with the THC's Rules of Practice and Procedure, Chapter 26, Section 26, and the Council of Texas Archeologists' (CTA) Guidelines for Cultural Resources Management Reports.

Task 1—Archival Research and Agency Coordination

Prior to initiating fieldwork, Horizon will:

- Perform basic archival research at the THC, the General Land Office (GLO), the National Park Service's (NPS) online National Register Information System (NRIS), and/or other relevant archives for information on previous cultural resources investigations conducted in the vicinity of the project area and previously recorded archeological sites and historic properties within and in the vicinity of the project area. Desktop archival studies will examine a 1.0-mile radius surrounding the project area.
- Review the abovementioned archives; historical, geological, topographic, and soil maps; and aerial photographs prior to initiating fieldwork to evaluate the potential for encountering significant cultural resources within the project area.
- Define the Area of Potential Effect (APE) of the proposed project based on applicable federal and state agency guidelines, taking into account the horizontal extent of the construction footprint, the vertical

depth of ground-disturbing impacts, and potential indirect (e.g., viewshed) effects beyond the construction footprint.

Task 2—Archeological Survey Fieldwork

Horizon will:

- Apply for and obtain a Texas Antiquities Permit from the THC (required for any project that falls under the jurisdiction of the Antiquities Code of Texas). The application for a Texas Antiquities Permit requires the signature of the project sponsor and/or landowner, as appropriate, as well as the archeological Principal Investigator. The Texas Antiquities Permit must be issued by the THC prior to the initiation of any cultural resources field activities.
- Perform an intensive archeological survey, consisting of pedestrian walkover with surface inspection and systematic shovel testing at a level of intensity sufficient to meet or exceed the Texas State Minimum Archeological Survey Standards (TSMAS) and guidelines established by the CTA unless field conditions warrant excavation of more or fewer shovel tests.
- Document any cultural resources encountered to a sufficient degree to make preliminary recommendations of the significance of the resources in terms of their eligibility for inclusion in the NRHP and/or for designation as SALs, as appropriate.
- Inspect the locales of any previously recorded archeological sites within the project area, assess their current condition, and document the sites to a sufficient degree to make preliminary recommendations of the significance of the resources in terms of their eligibility for inclusion in the NRHP and/or for designation as SALs, as appropriate.

Task 3—Technical Report

Horizon will:

- Complete and submit *State of Texas Archeological Site Data Forms* (for new archeological sites) or *State of Texas Archeological Site Update Forms* (for previously recorded archeological sites) to TARL. Permanent site trinomials will be obtained from TARL for any new archeological sites documented within the project area during the survey.
- Assess the significance of any cultural resources within the project area in terms of their potential eligibility for inclusion in the NRHP and/or for designation as SALs, as appropriate.
- Develop a draft technical report detailing the project background, environmental and cultural setting of the project area, research goals and survey methods, survey results, recommendations for any cultural resources documented during the survey, and a bibliography of references cited suitable for review by the THC and any other applicable regulatory agencies.
- Submit a preliminary review copy of the archeological draft report describing the results of the survey in electronic (PDF) format to the client or review. Following approval of the draft report by the client, Horizon will submit an electronic copy of the report to the THC and any other applicable regulatory agencies for review and comment. Horizon will coordinate review with the regulatory agencies unless the client would prefer to coordinate agency review directly.
- Respond to any comments on the draft report offered by the THC and any other applicable regulatory agencies and produce a final report.
- Submit the final report to the client and the THC.

Task 4—Records Curation

Horizon will:

- Prepare project records for curation at TARL per the requirements of the Antiquities Code of Texas and TARL's *Stipulations and Procedures for the Preparation of Archeological Records and Photographs, Curation Supplies, and Sources* and/or *Stipulations and Procedures for the Preparation of Archeological Material Collections*, as appropriate.

Schedule

Horizon will complete archival research and fieldwork and initiate the process of applying for the Texas Antiquities Permit within 48 hours of receiving the client's notice to proceed. Note that the Texas Antiquities Permit must be issued by the THC before field activities can commence. Barring inclement weather conditions, access restrictions, or other unusual circumstances, Horizon anticipates that cultural resources survey fieldwork will take no more than three days to complete, inclusive of round-trip travel between Horizon's corporate headquarters in Austin, Texas, and the project area.

The draft report of the cultural resources survey will be completed within 30 days of the completion of the fieldwork and submitted for preliminary review to the client. Horizon will respond to the client's comments and submit the draft report to the THC and other regulatory agencies, as appropriate, for review unless the client would prefer to coordinate agency review directly. Under state law, the THC has 30 days to review technical reports for cultural resources surveys. Federal agency review timeframes are often tied to the overall permitting process and may take longer.

Assumptions

- All archeological investigations are supervised by an archeological Principal Investigator who meets the Secretary of the Interior's (SOI) Professional Qualification Standards for Archeology, and all architectural history investigations are supervised by an architectural history Principal Investigator who meets the SOI's Professional Qualifications for Architectural History.
- The project area consists only of the proposed project facilities described in this proposal. This proposal does not provide for surveys of reroutes, alternate alignments, or additional or ancillary locations that fall outside the boundaries of the project area as described herein.
- The client will secure right-of-entry (ROE) for all segments of the project area to be surveyed, and ROE to the entire project area will be available to Horizon upon receiving notice to proceed with field activities. Any portions of the project area to which ROE is not available will not be surveyed and may be subject to future survey-level investigations not covered under the terms of this proposal.
- This proposal assumes that no more than one field mobilization would be required to complete the cultural resources survey. Any extra mobilizations or special client requests, such as appointments to survey tracts under emergency limited access agreements (e.g., temporary restraining orders [TRO], writs of possession), reroutes, or on-call requests, will be billed as out-of-scope activities on a time-and-materials basis using Horizon's standard rate schedule.
- The base cost estimate assumes that the cultural resources survey will be negative for cultural resources. In the event that archeological sites are encountered within the project area, an additional fee not to exceed **\$3,500** per prehistoric/protohistoric site or **\$4,500** per historic-age site will be incurred, which is inclusive of additional site recording time in the field, site form filing fees, and additional mapping and reporting requirements. In addition, for historic-age sites, the extra fee covers historical/archival research required under the state's survey guidelines. Note that these estimated fees apply to small to moderate-sized sites that can be recorded in approximately a half day or less. Large, deep, or unusually

complex sites may require additional time to record and incur additional charges. As Horizon is required to record any archeological sites encountered during fieldwork, this is not considered an out-of-scope cost and will be incurred automatically if archeological sites are found. Depending on the number, type, and specific characteristics of the sites, the full fee may not be required for each site. Horizon will notify the client within 48 hours of completion of the archeological field survey as to how many archeological sites were recorded and the scale of additional fees anticipated to be necessary.

- This cost estimate does not include provisions for mechanical excavations, such as backhoe trenching in areas of deep alluvium or Gradall stripping adjacent to cemeteries, if such are encountered during the survey fieldwork. Mechanical operations are required by the state's survey guidelines in areas with a moderate to high probability to contain cultural resources buried more deeply than standard shovel testing is capable of reaching (i.e., about 1.0 meter [3.3 feet] below ground surface depending on soil type). Due to the physiographic setting of the project area, backhoe trenching is anticipated to be unnecessary for this project, though it is possible that any stream crossings or areas of intact alluvium may require mechanical excavations. In the event that mechanical excavations are determined to be necessary based on the results of the pedestrian survey, a supplemental work authorization may need to be executed to cover any additional fieldwork.
- This proposal includes a limited review of existing literature, site files, and online map sources to determine the estimated time period of occupation of any historic-age archeological sites and/or construction dates of historic-age structures or engineering features that may be encountered during the survey. If extensive historical research is required to more fully develop the context of historic-age resources, such as architectural evaluations; detailed reviews of historic records, deed records, genealogical records; or library or museum collections, a supplemental work authorization may need to be initiated.
- Horizon will employ a non-collection policy to the maximum extent practicable. Diagnostic (i.e., time- or culturally sensitive) and non-diagnostic artifacts will be sketched and photodocumented in the field, and notes will be recorded on their provenience and apparent cultural and chronological affiliation. In the event that any cultural materials are collected during the survey, they will be temporarily housed at Horizon's laboratory facilities in Austin, Texas, and processed for analysis. Any cultural materials collected from private land would be returned to the landowner. Any artifacts collected from public land during the survey may need to be curated at an approved curatorial facility according to the guidelines of the THC and the curation facility. This scope of work does not cover the costs of processing artifacts for curation, the negotiation of a curation agreement with an approved curation facility, or curation fees.
- This proposal includes provisions for curating cultural resources survey records (e.g., field forms, field notes, digital photographs, photo sheets, official agency correspondence), which is required for all held-in-trust projects conducted under the Antiquities Code of Texas, at an approved curation facility, including Horizon's charges for preparing project records for curation as well as the curation facility's fees for permanently housing the project records. TARL charges a minimum fee for records-only curation for project records that occupy less than 1.5 inches of drawer space. This proposal assumes that 1.5 inches or less of drawer space would be required. In the event that more than 1.5 inches of drawer space is required or if TARL's records policies or fees change prior to submission of project records for curation, additional curation fees may be incurred that are not covered under the terms of this proposal.
- This proposal does not include provisions for conducting surveys for Traditional Cultural Properties or Traditional Cultural Plants. Information regarding these cultural resources is typically restricted within federally recognized tribes and not available to archeological contractors.

- This proposal covers only a Phase I cultural resources inventory. In the event that potentially significant prehistoric and/or historic-age resources are present within the project area, additional investigations may be required, such as significance testing and/or mitigation studies, that are not covered in this proposal.
- One technical report will be written describing the results of the cultural resources survey of the project area. This proposal does not provide for generating multiple or supplemental technical reports.
- This proposal provides for responding to two (2) rounds of comments, including one initial set of client comments and one (1) set of agency comments. Additional rounds of comments may not be covered under the terms of this proposal and may be billed as out-of-scope activities on a T&M basis using Horizon's standard rate schedule.
- Title 13, Part 2, Chapter 26, Subchapter C, Rule 16.16 of the Texas Administrative Code requires the holder of a Texas Antiquities Permit to submit a technical report presenting the results of the permitted investigation to the THC for review. Horizon will provide the client with a reasonable opportunity to review, comment upon, and approve the technical report prior to submission to the THC. Horizon can delay initiating the review process within reasonable limits given project scheduling needs but must allow for sufficient time to complete the entire review process prior to the expiration date of the Antiquities Permit. This requirement applies even if the development of the project is postponed or canceled. Horizon will invoice the client for report preparation and records curation charges as described in this proposal pursuant to fulfillment of the conditions of the permit.
- This proposal and cost estimate are valid for 90 days

TASK V
AGENCY COORDINATION
SCOPE OF WORK

Berg♦Oliver will provide consulting services that will include, but not be limited to the following: project coordination; communicating with the client and reviewing agency(ies) to expedite completion of the project; attending meetings with the client and reviewing agency(ies), as necessary to move through the conceptual design phase of the project. BOA will coordinate with the following agencies as needed USACE, USFWS, TPWD, and the Texas GLO. No deliverable is associated with this task and this task does not include the preparation or submittal of any permitting applications.

TASK VI
PROJECT MANAGEMENT
SCOPE OF WORK

Berg♦Oliver will provide consulting services that will include, but not be limited to the following: preparation of a job safety analysis, project coordination; communicating with the client to expedite completion of the project; determining and evaluating alternatives with the client and design team; attending meetings with the client and design team, as necessary; and provide recommendations for construction and permitting of the proposed dune restoration project.

ATTACHMENT B



BERG ♦ OLIVER ASSOCIATES

Environmental Science & Land Use Consultants
14701 St. Mary's Lane, Suite 400, Houston, Texas 77079
(281) 589-0898 fax: (281) 589-0007
Houston ♦ Dallas/ Fort Worth ♦ www.bergoliver.com

2023 PERSONNEL RATE SCHEDULE

<u>Personnel</u>	<u>Hourly Billing Rate</u>
Principal In Charge	\$285.00
Project Director	\$280.00
Sr. Vice President	\$265.00
Vice President	\$240.00
Sr. Project Manager	\$200.00
Project Manager	\$180.00
Assistant Project Manager	\$170.00
Project Coordinator III	\$170.00
Project Coordinator II	\$160.00
Project Coordinator I	\$150.00
Project Leader	\$165.00
Field Leader	\$125.00
GIS Analyst II	\$165.00
GIS Analyst I	\$115.00
Field Tech II	\$105.00
Field Tech I	\$80.00
Project Support Officer II	\$135.00
Project Support Officer I	\$100.00
Editor	\$100.00
Admin IV	\$145.00
Admin III	\$125.00
Admin II	\$85.00
Admin I	\$75.00
Specialist Subcontractors	Cost + 15%

Above rates include all normal expenses of LJA's business, including mailing charges, in-house photocopying, long distance telephone costs, in-house graphic systems, and local area travel, unless otherwise stated in the agreement. Expenses, such as travel beyond fifty (50) miles, outside photocopying, delivery charges, photographic reproduction, and other outside services, are considered reimbursable by the client at rate of cost +15%. Any extraordinary reimbursable expenses, in excess of \$250.00 must have authorization from the client. NOTE: Hourly rates are adjusted annually as inflation dictates. If this contract spans more than one fiscal year (ending December 31), hourly rates may be adjusted. Regardless of any rate adjustment, the "not to exceed" figures in a contract will not change.

ATTACHMENT C
GENERAL CONDITIONS FOR SERVICES

Article 1: Services by Consultant

1.1 Standard of Care. Consultant will perform the scope of services (herein the "Services") expressly described in this Agreement, after it is signed by both parties. The Services performed by Consultant will be conducted in a manner consistent with the degree of care and skill ordinarily exercised by competent consultants performing the same or similar services in the same locale acting under similar circumstances and conditions.

1.2 Restoration. Consultant will exercise reasonable care to minimize damage to the site. However, Client acknowledges that some damage may occur in the normal course of performing the Services, even if due care is exercised, and agrees that Consultant will not be liable for such damage and will be entitled to additional compensation if it is asked to perform restoration services not expressly included in the Services.

1.3 Reports and Investigations. If Consultant's performance of the Services includes assessment, identification, or testing services, the number of investigations and observations Consultant makes, the number of samples it collects, or the number of tests it performs are necessarily limited by budgetary and time constraints, and observations and samples by their specific locational nature may not exactly represent similar samples or observations in the immediate vicinity. Consultant does not guarantee that all violations, problems, or sources of possible environmental condition will be identified, that all contaminants or environmental condition will be detected/identified, or that requirements, standards, or conditions will not change over time. Any report issued by Consultant will set forth its findings and conclusions based on the limited information available from the observations, investigations, sampling, and/or testing conducted under this Agreement. In preparing its report, Consultant may review and interpret information provided by Client, third parties, and regulatory agencies and will be entitled to rely on the accuracy of such information, including laboratory results, without performing an independent verification. Consultant may include in its report a Statement of Limitations describing the limitations of its investigations and findings and indicating that

the report is for Client's use only and will not be relied upon by any third party, except as expressly agreed in writing by Consultant, and then only at such third party's own risk.

1.4 Documents. All reports and documents prepared and deliverable to Client pursuant to this Agreement will become Client's property upon full payment to Consultant. Consultant may retain file copies of such deliverables. All other reports, notes, calculations, data, drawings, estimates, specifications, and other documents and computerized materials prepared by Consultant are instruments of Consultant's Services and will remain Consultant's property. All deliverables provided to Client are for Client's use only for the purposes disclosed to Consultant, and Client will not transfer them to others or use them or permit them to be used for any extension of the Services or any other project or purpose, without Consultant's express written consent.

1.5 Services Not Included. Unless expressly included in the Services, Consultant's services will not include the following:

- (a) the detection, removal, treatment, transportation, disposal, monitoring, or remediation of any contamination of soil or groundwater at the site by petroleum or petroleum products (collectively called "Oil") or hazardous, toxic, radioactive, or infectious substances, including any substances regulated under RCRA or any other federal, state, or local environmental laws, regulations, statutes, rules, standards, or ordinances (collectively called "Hazardous Materials");
- (b) mechanical compaction of backfill;
- (c) dewatering before installation or filling tanks with liquid or ballast following installation;
- (d) pump-out or disposal of product, water, or other contents from existing tanks;
- (e) installation of anchor systems, foundations, shoring, or other support devices;
- (f) concrete, blacktop, water, sewer, electricity, or other outside services;
- (g) the removal of any soil or water;
- (h) installation of protective fencing or other structure; or
- (i) construction or monitoring.

Consultant will be entitled to additional compensation if it is asked to perform or provide

such services listed above. Consultant will not be responsible for damage to or imperfections in any concrete slabs it installs unless they are protected by Client from traffic for seven days.

1.6 Estimates. Any estimates of probable construction or implementation costs, financial evaluations, feasibility studies, or economic analyses prepared by Consultant will represent its best judgement based on its experience and available information. However, Client recognizes that Consultant has no control over costs of labor, materials, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices. Accordingly, Consultant does not guarantee that proposals, bids, or actual costs will not vary from opinions, evaluations, or studies submitted by Consultant.

1.7 Other Contractors. Except to the extent expressly agreed in writing, Consultant will not have any duty or authority to direct, supervise, or oversee any contractors of Client or their work or to provide the means, methods, or sequence of their work or to stop their work. Consultant's Services and/or presence at a site will not relieve others of their responsibility to Client or to others. Consultant will not be liable for the failure of Client's contractors or others to fulfill their responsibilities, and Client agrees to indemnify, hold harmless, and defend Consultant against any claims arising out of such failures.

1.8 Litigation Support. Consultant will not be obligated to provide expert witness or other litigation support related to its Services, unless expressly agreed in writing. In the event Consultant is required to respond to a subpoena, government inquiry, or other legal process related to the Services in connection with a proceeding to which it is not a party, Client will reimburse Consultant for its costs and compensate Consultant at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.

Article 2: Responsibilities of Client

2.1 Client Requirements. Client, to the best of its ability, without cost to Consultant, will:

- (a) Designate to Consultant a person to act as Client's representative;
- (b) Provide or arrange for access and make all provisions for Consultant to enter any site where Services are to be performed;
- (c) Furnish Consultant with all reasonably available information pertinent to the Services;
- (d) Furnish Consultant with a legal

description of the site and all available surveys, site plans, and relevant information about site conditions, topography, boundaries, easements, zoning, land use restrictions, and right-of-ways, if available and as needed;

(e) Furnish Consultant with all approvals, permits, and consents required for performance of the Services except for those Consultant has expressly agreed in writing to obtain;

(f) Notify Consultant promptly of all known or suspected Hazardous Materials at the site, of any contamination of the site by Oil or Hazardous Material, and of any other conditions requiring special care, and provide Consultant with any available documents describing the quantity, nature, location, and extent of such materials, contamination, or conditions;

(g) Comply with all laws and provide any notices required to be given to any government authorities in connection with the Services, except for such notices Consultant has expressly agreed in writing to give;

(h) Before commencement of any drilling or excavation at a site, furnish Consultant with a complete description (to the best of their ability) of all underground objects and structures at the site, including, but not limited to, wells, tanks, and utilities; and indemnify, hold harmless, and defend Consultant against claims arising out of damages to underground objects or structures not properly defined;

(i) Provide Consultant with information concerning prior owners of the site and any current or historical uses of or activities on the site by Client, prior owners, or others, as needed;

(j) Furnish to Consultant any known contingency plans related to the site; and

(k) Furnish to Consultant any previous environmental audits and/or assessments related to the site.

2.2 Hazards. Client represents and warrants that it does not have any knowledge of Hazardous Materials or Oil, or unusually hazardous conditions at the site or of contamination of the site by Oil or Hazardous Materials except as expressly disclosed to Consultant in writing.

2.3 Confidentiality. Client acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to Consultant and agrees not to disclose it or otherwise make it available to others without Consultant's express written consent.

2.4 Health and Safety. Client acknowledges that it is now and will at all times remain in control of the project site, and Client acknowledges and

agrees that it retains title to all conditions existing on the site and shall report to the appropriate public agencies, as required, any conditions at the site that may present a potential danger to the public health, safety, or the environment. Client waives any claim against Consultant for injury or loss arising from such conditions. Except as expressly provided herein, Consultant will not be responsible for the adequacy of the health or safety programs or precautions related to Client's activities or operations, Client's other contractors, the work of any other person or entity, or Client's site conditions. Consultant will not be responsible for inspecting, observing, reporting, or correcting health or safety conditions or deficiencies of Client or others at Client's site. So as not to discourage Consultant from voluntarily addressing health or safety issues while at Client's site, in the event Consultant does address such issues by making observations, reports, suggestions, or otherwise, Consultant will nevertheless have no liability or responsibility arising on account thereof. Client agrees to indemnify, hold harmless, and defend Consultant to the fullest extent permitted by law against any and all claims arising out of such programs, activities, conditions, or deficiencies unless Consultant is responsible for gross negligence with regard to its work.

Article 3: Changes; Delays; Excused Performance

3.1 Changes. Unless this Agreement expressly provides otherwise, Consultant's proposed compensation represents its best estimate of the costs, effort, and time it expects to expend in performing the Services based on its reasonable assumption of the conditions and circumstances under which the Services will be performed including, but not limited to, those stated in Section 3.2. As the Services are performed, conditions may change or circumstances outside Consultant's reasonable control (including changes of law or regulatory policy) may develop that would require Consultant to expend additional costs, effort, or time to complete the Services, in which case Consultant will notify Client, and an equitable adjustment will be made to Consultant's compensation. In the event conditions or circumstances require the Services to be suspended or terminated, Consultant will be compensated for Services previously performed and for costs reasonably incurred in connection with the suspension or termination.

3.2 Assumptions. Unless specified in writing, Consultant's compensation is based on

the assumption that: (a) there is no impact spoil or excavation of natural resources on or adjacent to the site that has not been disclosed to Consultant by the client; (b) there is no contamination of soil or groundwater at the site by Oil or Hazardous Materials that has not been disclosed to Consultant by Client; (c) Consultant will not encounter any underground structures, utilities, boulders, rock, water, running sand, or other unanticipated conditions in the course of drilling or excavation; (d) tank installations will not require dewatering by Consultant; and (e) if Consultant's Services includes services related to petroleum facilities or storage tanks, groundwater will not cause tanks to float or require the use of Ballast. Consultant will be compensated for any additional efforts expended or costs incurred in addressing such conditions.

3.3 Force Majeure. Consultant will not be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God, act or omission of Client or its contractors, failure of Client or any government authority to timely review or to approve the Services or to grant permits or approvals, or any other cause beyond Consultant's reasonable control. In the event of such delay or failure, the time for performance will be extended by a period equal to the time lost plus a reasonable recovery period, and the compensation will be equitably adjusted to compensate for any additional costs Consultant incurs due to any such delay.

3.4 Disputes. The parties shall attempt to settle all claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to breach thereof, by discussion between the parties' senior representatives. If any dispute cannot be resolved in this manner, within five (5) business days, the parties agree to refer such claims, disputes, and controversies to mediation by a mediator mutually agreed to and equally paid for by the parties before, and as a condition precedent to, the initiation of any adjudicative action or proceeding, including arbitration. The mediator shall convene the mediation at the request of either party, and the mediation will last at such times and as long as the mediator reasonably believes agreement is probable. Notwithstanding the foregoing, prior to or during negotiation or mediation, either party may initiate litigation that would otherwise become barred by a statute of limitation. In the event any actions are brought to enforce this Agreement, the

prevailing party shall be entitled to collect its litigation costs including reasonable attorney's fees from the other party.

Article 4: Compensation

4.1 Rates. Unless otherwise agreed in writing, Consultant will be compensated for its Services at its standard rates and will be reimbursed for costs and expenses (plus reasonable profit and overhead) incurred in its performance of the Services.

4.2 Invoices. Consultant may invoice Client on a monthly or other progress billing basis. Invoices are due and payable upon receipt by Client. On amounts not paid within 30 days of invoice date, Client will pay interest from invoice date until payment is received at the lesser of 1.5% per month or the maximum rate allowed by law. If Client disagrees with any portion of an invoice, it will notify Consultant in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and will pay the portion not in dispute.

4.3 Suspension, etc. Consultant may suspend or terminate the Services at any time if payment is not received when due and will be entitled to compensation for the Services previously performed and for costs reasonably incurred in connection with the suspension or termination.

4.4 Collection. Client will reimburse Consultant for Consultant's costs and expenses (including reasonable attorneys' and witnesses' fees) incurred for collection under this Agreement.

4.5 Taxes, etc. Except to the extent expressly agreed in writing, Consultant's fees do not include any taxes, excises, fees, duties, or other government charges related to the goods or Services provided under this Agreement, and Client will pay such amounts or reimburse Consultant for any amounts it pays. If Client claims that any goods or Services are subject to a tax exemption or direct payment permit, it will provide Consultant with a valid exemption or permit certificate and indemnify, defend, and hold Consultant harmless from any taxes, costs, and penalties arising out of the use or acceptance of same.

Article 5: Insurance and Allocation of Risk

5.1 Insurance. Consultant will maintain insurance coverage for Professional Liability,

Commercial Liability, Auto, and Workers' Compensation in amounts in accordance with legal and business requirements. Certificates evidencing such coverage will be provided to Client upon request.

5.2 Client Indemnification. Client agrees to indemnify and hold harmless Consultant from and against any and all liabilities, demands, claims, fines, penalties, damages, forfeitures, and suits, together with reasonable attorneys' and witness' fees and other cost and expenses of defense and settlement, which Consultant may incur, become responsible for, or pay out as a result of death or bodily injury or threat thereof to any person, destruction, or damage to any property, contamination of or adverse effect on natural resources or the environment, any violation of local, state or federal laws, regulations or orders, or any damages claimed by third parties to the extent arising in whole or in part out of Client's violation of law or breach of this Agreement or out of the negligence or willful misconduct of Client, its other contractors, agents, suppliers, or employees.

5.3 Consultant Indemnification. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Client from and against loss, liability, and damages sustained by Client, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property to the extent caused directly by Consultant's failure to adhere to the standard of care described herein.

5.4 Limitation of Liability. No employee or agent of Consultant shall have individual liability to Client. Consultant's aggregate liability for any and all claims arising out of this Agreement or out of any goods or Services furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, tort, trespass, or any other theory of liability, will be limited to \$10,000 or the total compensation received by Consultant from Client under this Agreement, whichever is the lesser. In no event will Consultant be liable for special, indirect, incidental, or consequential damages, including commercial loss, loss of use, or lost profits, however caused, even if Consultant has been advised of the possibility of such damages. **Any claim will be deemed waived unless made by Client in writing and received by Consultant within one year after completion of the Services with respect to which the claim is made.**

5.5 Consequential Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST REVENUES, LOSS OF USE, LOSS OF FINANCING, LOSS OF REPUTATION, LOST PROFITS, DELAYS, OR OTHER ECONOMIC LOSS ARISING FROM ANY CAUSE INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER CAUSE WHATSOEVER, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY. REGARDLESS OF LEGAL THEORY, CONSULTANT SHALL BE LIABLE ONLY TO THE EXTENT THAT ANY DAMAGES SPECIFIED HEREIN ARE FOUND BY A FINAL COURT OF COMPETENT JURISDICTION TO HAVE BEEN THE SEVERAL LIABILITY OF CONSULTANT. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES THAT ARE INCONSISTENT WITH THIS PROVISION OF THE AGREEMENT ARE WAIVED.

Article 6: Hazardous Materials Provisions

6.1 Hazardous Materials. Except to the extent expressly agreed in writing, Consultant's Services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal, or treatment of petroleum or petroleum products (collectively called "Oil") or of any hazardous, toxic, radioactive, or infectious substances, including any substances regulated under RCRA or any other federal or state environmental laws (collectively called "Hazardous Materials"). The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a site where Consultant is to perform Services or of contamination of the site by Oil or Hazardous Materials not previously disclosed to Consultant in writing will entitle Consultant to suspend its Services immediately, subject to mutual agreement of terms and conditions applicable to any further Services, or to terminate its Services and to be paid for Services previously performed. In no event will Consultant be required or construed to take title, ownership, or responsibility for such Oil or Hazardous Materials.

6.2 Hazardous Materials Indemnification. Client acknowledges that Consultant does not have any responsibility for preexisting Oil and Hazardous Materials at the site, any resultant contamination there from, or, except as expressly agreed in writing, for previous detection,

monitoring, handling, storage, transportation, disposal, or treatment, that Consultant's compensation is not commensurate with the unusually high risks associated with such materials, and that insurance is not reasonably available to protect against such risks. Therefore, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in addition to the indemnification provided in Section 5.3, Client agrees to indemnify, hold harmless, and defend Consultant against all damages arising out of or related to Oil or Hazardous Materials located at or removed from the site, including damages such as the cost of response or remediation arising out of application of common law or statutes such as CERCLA or other "Superfund" laws imposing strict liability.

Article 7: Miscellaneous Provisions

7.1 Confidential Information. Although Consultant generally will not disclose without Client's consent information provided by Client or developed by Consultant in the course of its Services and designated by Client as confidential (but not including information which is publicly available, is already in Consultant's possession, or obtained from third parties), Consultant will not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property, or welfare of human beings. Consultant will advise Client (in advance, except in emergency) of any such disclosure.

7.2 Notices. Notices between the parties will be in writing and will be hand delivered or sent by certified mail properly addressed to the appropriate party.

7.3 Assignment. Neither party may assign this Agreement without the written consent of the other party, except that Consultant may assign this Agreement to its affiliates and may use subcontractors in the performance of its Services. Nothing contained in this Agreement will be construed to give any rights or benefits to anyone other than the Client and Consultant, without the express written consent of both parties.

7.4 Independent Parties. The relationship between Client and Consultant is that of independent contracting parties, and nothing in this Agreement or the parties' conduct will be construed to create a relationship of agency, partnership, or joint venture.

7.5 Affiliates. The Services may be

performed by any affiliated company of Consultant under its common insurance program.

7.6 Governing Law, Venue, and Headings.

This Agreement will be governed by and construed in accordance with the laws of the State of Texas without giving effect to any conflict or choice of law rules or principles under which the law of any other jurisdiction would apply. Each party hereby submits to the jurisdiction of the federal and state courts located in Harris County and agrees that such courts shall be exclusive forum and venue for resolving any legal suit, action or proceeding arising out of or relating to this Agreement. The headings in this Agreement are for convenience only and are not a part of the Agreement between the parties.

7.7 Survival. All obligations arising prior to this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties will survive the completion of the services and the termination of this Agreement.

7.8 Entire Agreement. This Agreement supersedes all prior agreements and, together with any work release document issued under this Agreement and signed by both parties, constitutes the entire agreement between the parties. Any amendments to this Agreement will be in writing and signed by both parties. In no event will the printed terms on any purchase order, work order, or other document provided by Client modify or amend this Agreement, even if it is signed by Consultant, unless Consultant signs a written statement expressly indicating that such terms supersede the terms of this Agreement. In the event of an inconsistency between these General Conditions and any other writings, which comprise this Agreement, the other writings will take precedence.

Ver. 04NOV2022

EXHIBIT "B"
INSURANCE REQUIREMENTS

1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
5. Professional Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.

EXHIBIT “C”
COMPLIANCE WITH LAWS

The Consultant agrees to abide by any and all applicable Federal and state laws. The following list of Federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive. The Consultant shall require that its contractors and subcontractors comply with applicable laws:

- i. The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. §§ 12101 et seq.; 28 C.F.R. § 35; 29 C.F.R. § 1630);
- ii. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d et seq.) and United States Department of Transportation regulation, 49 C.F.R. Part 21;
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601 et seq.), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- iv. Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 C.F.R. §§ 1625-27, 1630; 28 C.F.R. § 35; 41 C.F.R. § 60; and 49 C.F.R. § 27);
- v. Restrictions governing the use of Federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. § 20);
- vi. The Clean Air Act, as amended (42 U.S.C. §§ 1857 et seq., as amended by Pub. L. 91-604);
- vii. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.);
- viii. The Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq., as amended by Pub. L. 92-500);
- ix. The Endangered Species Act, 16 U.S.C. § 1531, et seq.
- x. 23 U.S.C. § 138 [49 U.S.C. § 303]
- xi. The health and safety requirements set forth in 23 C.F.R. § 635.108;
- xii. The prevailing wage requirements set forth in 42 U.S.C. § 276a, 23 U.S.C. § 113, as supplemented by 29 C.F.R. Part 5, 23 C.F.R. §§ 635.117(f), 635.118 and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;
- xiii. The Buy America requirements set forth in Section 165 of the Surface Transportation Assistance Act of 1982 and implementing regulations (23 C.F.R. § 635.410);
- xiv. The requirements of 23 U.S.C. §§ 101 et seq. and 23 C.F.R.; and

- xv. The applicable requirements of 49 C.F.R. Part 26 relating to the Disadvantaged Business Enterprise program.

AGREED TO AND ACKNOWLEDGED THIS *[date]* _____

DE Corp.

a Texas company

By: _____


Name: Christopher W. Sallese, PMP

Title: Division Chief, Special Projects

Date: 08/11/2023

EXHIBIT “D”
CERTIFICATE OF INTERESTED PARTIES

Effective January 1, 2016, all contracts and contract amendments, extensions, or renewals executed by the Commissioners Court will require the completion of Form 1295 “Certificate of Interested Parties” pursuant to Government Code § 2252.908. Form 1295 must be completed by the Consultant and submitted with the partially executed Professional Services Agreement prior to final execution by Brazoria County. The Consultant shall update this document and resubmit it as needed for the duration of this contract.

The Texas Ethics Commission has posted a video which explains the process on how to submit Form 1295. The video link is available on the Brazoria County Purchasing website at <http://brazoriacountytexas.gov/departments/purchasing/doing-business>.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

DE Corp.
Houston, TX United States

Certificate Number:
2023-1058621

Date Filed:
08/11/2023

Date Acknowledged:
8/11/2023

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Brazoria County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

RFSQ #23-01
Professional services agreement for engineering services for the restoration of 4,600 feet of natural dune systems (DEC 005466)

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Maksoud, Michel	Houston, TX United States	X	
	Bokaie, Nick	Houston, TX United States	X	
	Sallese, Christopher	Houston, TX United States	X	
	Sheldon, Steve	Houston, TX United States	X	
	Petterson, Johan	Houston, TX United States	X	
	Ahrens, Wayne	Houston, TX United States	X	

5 Check only if there is NO Interested Party.

☐

6 UNSWORN DECLARATION

My name is Nick Bokaie, and my date of birth is 01/01/1957.

My address is 3501 Harvest Moon Lane, Pearland, Tx, 77584, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 11th day of August, 20 23.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

EXHIBIT “E”
CONFLICT OF INTEREST DISCLOSURE

Texas Local Government Code Chapter 176 requires that any vendor or person who enters or seeks to enter into a contract with a local governmental entity (including any agent of such person or vendor) disclose in the Questionnaire Form CIQ the vendor or person’s employment, affiliation, business relationship, family relationship or provision of gifts that might cause a conflict of interest with a local governmental entity. By law, this questionnaire must be completed and filed with the records administrator of Brazoria County no later than the seventh business day after the date the person engages or communicates with Brazoria County or becomes aware of facts that require the completion of the questionnaire pursuant to Texas Local Government Code Section 176.006.

A person commits an offense if the person knowingly violates Texas Local Government Code section 176.006. An offense under this section is a Class C misdemeanor.

A copy of House Bill 23 which amended the Texas Local Government Code Chapter 176 is available at: <http://www.capitol.state.tx.us/tlodocs/84R/billtext/html/HB00023F.HTM>.

Texas Local Government Code Chapter 176 can be found here:
<http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>.

By submitting a response to this request, the Consultant represents compliance with the requirements of Texas Local Government Code Chapter 176. If required, send completed forms to:

Brazoria County Courthouse
County Clerk’s Office
111 E. Locust Street, Suite 200
Angleton, TX 77515

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

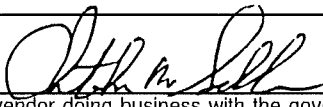
☐ Yes ☒ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☒ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 

Signature of vendor doing business with the governmental entity

08/11/2023

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

EXHIBIT “F”
CONTRACT AMENDMENTS

INSERT ALL AMENDMENTS TO THIS CONTRACT AS EXHIBIT F-1, F-2, ETC.