

To: Harris County Commissioners Court
Russell A Poppe
Through: Russell A. Poppe, P.E., Executive Director, Harris County Flood Control District
 ..prepared
Prepared By: Matthew K. Zeve, P.E., Deputy Executive Director, Harris County Flood Control District
Subject: License Agreement with United States Army Corps of Engineering
 ..end
Project ID (If applicable): n/a

Purpose and Request:

..title
 Authorization that U.S. Army Corps of Engineers License No. DACW64-3-21-0043 be accepted allowing the Harris County Flood Control District to access Units U100-00-00 and U101-00-00 to perform selective clearing and desnagging on South Mayde Creek and Langham Creek within Addicks Reservoir and it is recommended that the District Executive Director be authorized to execute the license. (Agreement No. 2022-07, Precincts 3 and 4).
 ..end

Background and Discussion:

The purpose of this License is to allow the District to perform selective clearing of S. Mayde Creek and Langham Creek with the limits of Addicks Reservoir. Performing this work will allow the District to improve the efficiency of flow into the reservoir, thus providing much needed flood damage relief to the residents upstream.

Fiscal Impact:

There is no direct cost related to this license. Approval to proceed with expenditure of funds for selective clearing were previously authorized by Commissioners Court.

Fiscal Summary			
Expenditures	FY 20-21	FY 21-22 Projected	Future Years Projected [3 additional years]
Service Impacted: <i>[Please provide service or division where expenditure will be used]*</i>			
Existing Budget	\$0	\$0	\$0
Additional Appropriation Requested	\$0	\$0	\$0
Total Expenditures	\$0	\$0	\$0
Funding Sources	\$0	\$0	\$0
Existing Department Budget	\$0	\$0	\$0
Please Identify Funding Source (General Fund, PIC, Special Revenue, Grant, Etc.)	\$0	\$0	\$0
HCFCD Operations & Maintenance*	\$0	\$0	\$0
Total Sources	\$0	\$0	\$0

Alternatives:

There is no alternative to execution of this license that will meet the objective of performing selective clearing within Addicks Reservoir prior to the start of hurricane season.

Alignment with Strategic Objective:

SO4.3 - Reducing flooding risks across Harris County by continuing to improve the maintenance and performance of District facilities which includes infrastructure vegetation management completing herbicide applications to all mowed channels.

Attachments: License Agreement

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Replaced DACW64-3-16-0012

DEPARTMENT OF THE ARMY LICENSE

**BUFFALO BAYOU AND TRIBUTARIES PROJECT, ADDICKS DAM
 HARRIS COUNTY, TEXAS**

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, under authority of his/her general administrative authority, hereby grants to Harris County Flood Control District, a conservation and reclamation district authorized by Legislature of the State of Texas (H.B. 1131), hereinafter referred to as the grantee, a license to perform selective clearing and refuse removal over, across, in and upon lands of the United States, Tracts: AR-76A, AR-76C, AR-77, AR-78, AR-79, AR-81, AR-96 and AR-161E (Langham Creek) and AR-16, AR-17, AR-18, AR-19, AR-151 and AR-161E (South Mayde Creek), as identified in Exhibit A, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS LICENSE is granted subject to the following conditions.

1. TERM

This license is granted for a term of five (5) years, beginning January 1, 2021 and ending December 31, 2025, but revocable at will by the Secretary.

2. CONSIDERATION

The consideration for this license shall be the selective cutting of dead or undesirable trees and vegetation, and the relocation of inorganic obstructions to a licensed landfill. The service performed shall facilitate the operation and maintenance of the floodplain described herein for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

3. NOTICES

All notices and correspondence to be given pursuant to this license shall be addressed, if to the grantee, to Russell A Poppe, Executive Director, Harris County Flood Control District, 9900 Northwest Freeway, Houston, Texas 77092; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, Post Office Box 1229, Galveston, Texas 77553, Physical Address: 2000 Fort Point Road, Galveston, Texas 77553; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

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Except as otherwise specifically provided, any reference herein to “Secretary”, “Real Estate Contracting Officer”, or “said officer” shall include their duly authorized representatives. Any reference to “grantee” shall include any duly authorized representatives.

5. SUPERVISION BY THE REAL ESTATE CONTRACTING OFFICER

The use and occupation of the premises shall be subject to the general supervision and approval of the Real Estate Contracting Officer, USACE, Galveston District, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises.
- c. subject to other outgrants of the United States on the premises.
- d. personal to the grantee, and this license, or any interest therein, may not be transferred or assigned.
- e. subject to the right of the United States to collect amounts necessary to cover administrative expenses associated with the processing, issuance, and management of this license under the authority of 10 U.S.C. 2695.

8. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the United States.

9. COST OF UTILITIES (Not Applicable)

The grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee’s proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer

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having such jurisdiction.

10. PROTECTION OF PROPERTY

The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. INDEMNITY (Not Applicable)

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the grantee, or for damages to the property or injuries to the person of the grantee’s officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

12. RESTORATION

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the Real Estate Contracting Officer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

13. NON-DISCRIMINATION

The Grantee shall not discriminate against any person or persons or exclude them from participation in the grantee’s operations, programs or activities because of race,

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color, religion, sex, age, handicap or national origin in the conduct of operations on the premises. The grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

14. TERMINATION

This license may be terminated by the Grantee at any time by giving the Real Estate Contracting Officer at least thirty (30) day notice in writing to the fore mentioned address.

15. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

16. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturb, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

17. DISCLAIMER

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the

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premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

18. EXECUTIVE ORDER 13658

Any reference in this section to “prime contractor” or “contractor” shall mean Harris County Flood Control District and any reference to “contract” shall refer to License DACW64-3-21-0043.

a. The parties expressly stipulate this contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

b. Minimum Wages.

(1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2021 and December 31, 2021 shall be \$10.95 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2021. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

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(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

(c) Withholding. The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

(d) Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

(e) The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(f) Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.95 (or the minimum wage as established each January thereafter) to any worker.

(g) Payroll Records.

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(1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1)(i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and social security number.
- (ii) The worker's occupation(s) or classification(s)
- (iii) The rate or rates of wages paid.
- (iv) The number of daily and weekly hours worked by each worker.
- (v) Any deductions made; and
- (vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

(h) The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

- (i) Certification of Eligibility.

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(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(j) Tipped employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

(k) Antiretaliation. It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

(l) Disputes concerning labor standards. Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes

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clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

(m) Notice. The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

19. SITE SPECIFIC CONDITIONS

a. Any Corps of Engineers work or maintenance work will take precedence over the activities authorized herein.

b. The Corps Point of Contact for the actual work will be Richard K. Long, Natural Resource Manager, Houston Project Office. He may be reached at 281-752-2601, 713-296-9177 or by e-mail at Richard.K.Long@usace.army.mil. In his absence, David Mackintosh may be contacted at 713-296-9180 at David.h.mackintosh@usace.army.mil.

c. Before access is made to each reach of each waterway to be selectively cleared and/or de-snagged, Harris County Flood Control District (HCFCD) shall host a pre-work

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meeting. At a minimum, invitees to this meeting shall include, but may not be limited to, Richard Long or another representative of the Houston Project Office, HCFCF's Project Manager for this project and the contractor's Project Manager for the project. Both the HCFCF's Project Manager and the contractor's Project Manager shall be the individuals which will be directly responsible for the work taking place.

d. The purpose of the meeting will be to ensure that all parties have a clear understanding of the work to be performed and the limits of the work. The meeting may include, but may not be limited to, a discussion on ingress and egress to the site and a written report on the last reach of waterway cleared which will include information on the success of the work, difficulties encountered, information on herbicide use, and information on the man-made debris removed from government property.

e. A post work conference shall also take place after all work has been accomplished for the season. A report such as the one described above shall be provided at the meeting.

f. All work must be confined to an area approximately 350-feet wide (175-feet either side from the centerline of the channel).

THIS LICENSE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this ___ day of _____, 2021.

Timothy J. Nelson
Contracting Officer, Real Estate Division
Galveston District
U.S. Army Corps of Engineers

THIS LICENSE is also executed by the grantee this ___ day of _____, 2021.

Russell A Poppe
Executive Director
Harris County Flood Control District

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CERTIFICATE

I, Mitzi Turner, certify that I am the County Attorney assigned to represent the Harris County Flood Control District, the Grantee named herein, and that Mr. Russell A Poppe who signed this license on behalf of the Grantee, was then the Executive Director for the Harris County Flood Control District, State of Texas. I further certify that the said officer was acting within the scope of powers delegated to this office by the governing body of the Commissioners Court of Harris County, Texas in executing said instrument.

Date

Signature

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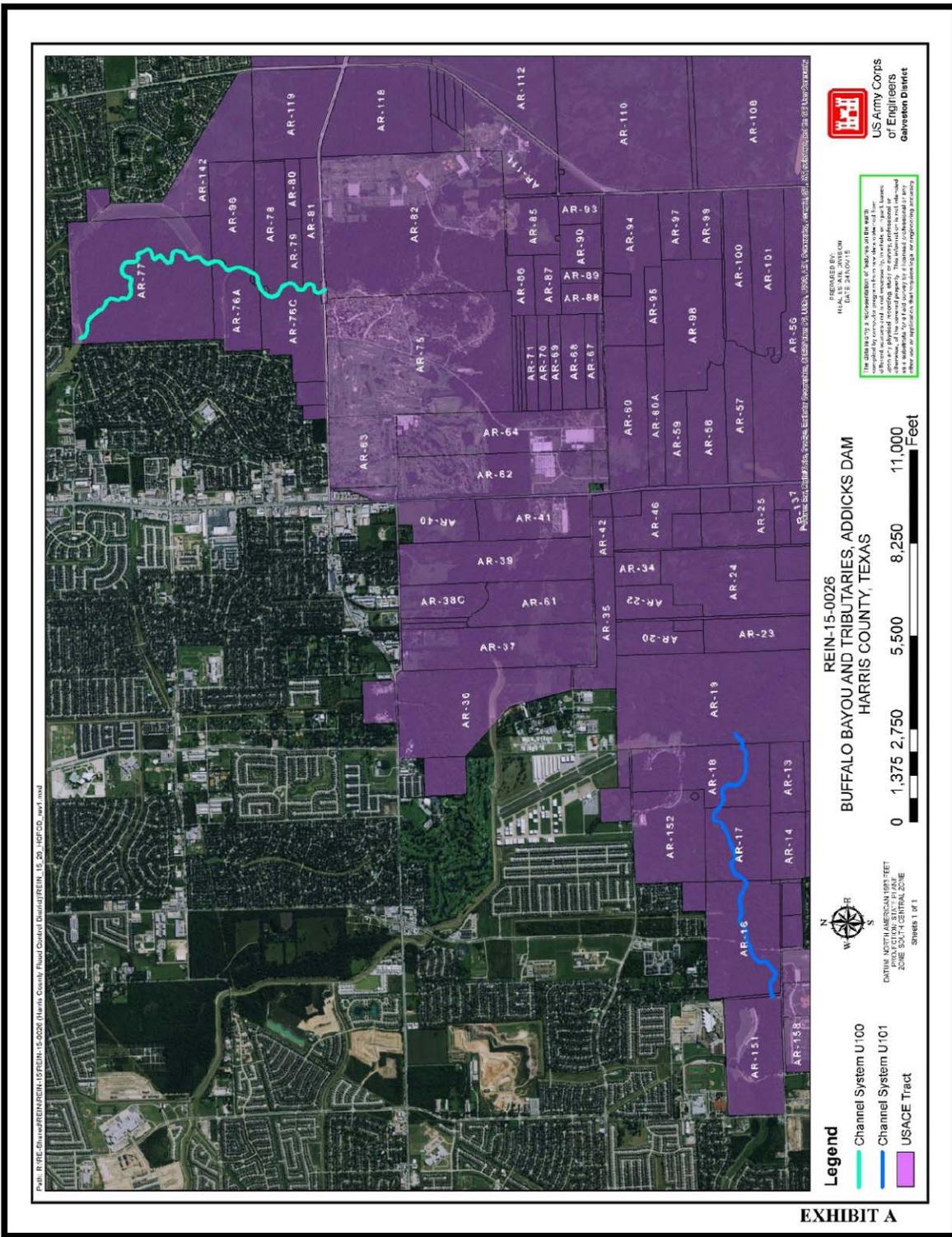
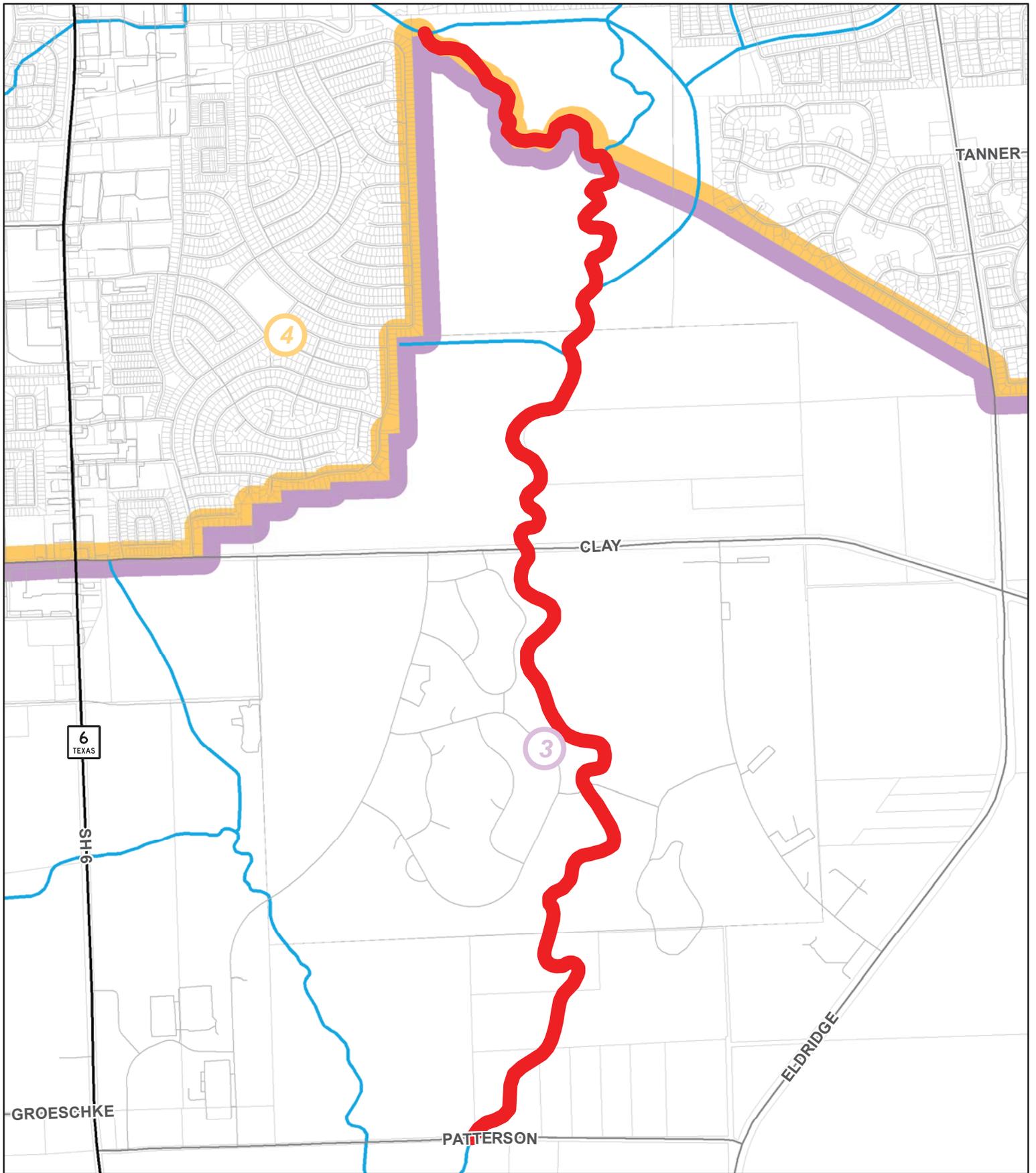


EXHIBIT A

EXHIBIT A

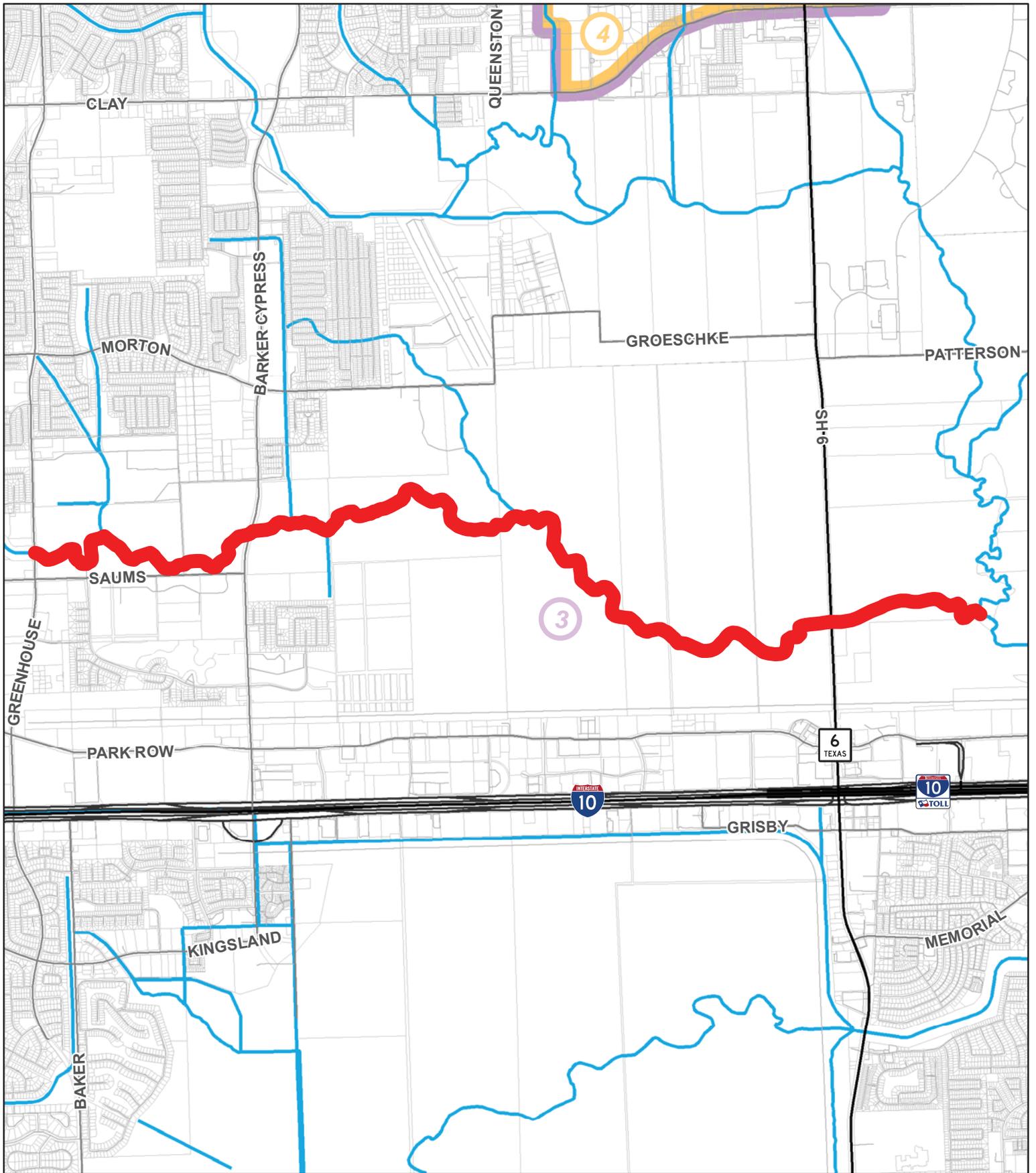


Channel ID: U100-00-00
Watershed: Addicks Reservoir
Precinct: 3

Pct No

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Watershed: Addicks Reservoir
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