

**INTERLOCAL AGREEMENT**

**THE STATE OF TEXAS       §**  
**§**  
**COUNTY OF HARRIS       §**

This Agreement is made and entered into pursuant to Texas Government Code Ann. 791.001, et seq. (the Interlocal Cooperation Act), by and between **Harris County Water Control and Improvement District No. 159**, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as the "WCID," and **Harris County Flood Control District**, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as the "HCFCD," each a "Party" to this Agreement, and are collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the WCID has designed and intends to construct channel conveyance improvements, detention volume storage, and associated control structures in HCFCD Units U100-00-00 and U500-02-00 (the "Project"); and

WHEREAS, HCFCD has reviewed and approved plans prepared by the WCID to construct the Project on HCFCD property ("Property"), which boundaries are shown in dashed lines on the map attached as Exhibit A; and

WHEREAS, HCFCD completed a report entitled "Upper Langham Creek Capital Improvements and Impact Fee Utilization Plan," dated December 2008, outlining the responsibilities of HCFCD in developing a drainage solution for the upper portion of the Langham Creek watershed (the "Program"); and

WHEREAS, Harris County Commissioners Court did formally adopt said report and associated Impact Fee Utilization Plan at its meeting on January 27, 2009; and

WHEREAS, Harris County Commissioners Court did formally adopt the associated "Guidelines for New Development in the Upper Langham Creek Service Area" at its meeting on January 4, 2012; and

WHEREAS, the Program requires HCFCD to construct drainage control structures within the limits of the Project; and

WHEREAS, the approved design plans for construction of the Project include modifications to three previously constructed control structures in HCFCD Unit U100-00-00, specifically the control structures identified in Exhibit A at Mason Road, Seminole Gas Pipeline, and Trunkline Gas Pipeline, respectively; and

WHEREAS, the approved design plans for construction of the Project include construction of new control structures and equalizer structures in HCFCD Unit U500-02-00, specifically the structures identified in Exhibits A and B as Weir W-1, Weir W-2, Weir W-3, Restrictor R-1, Restrictor R-2, U-1, U-2, and U-3, respectively; and

WHEREAS, the approved design plans for construction of the Project include modifications to a previously constructed control structure in HCFCD Unit U100-00-00, specifically the control structure identified in Exhibit A at the Tennessee Gas Pipeline; and

WHEREAS, the WCID has publicly bid the Project, and HCFCD has determined the cost of the control structures and equalizer structures eligible for reimbursement to be \$1,555,924.07, as shown in Exhibit C, and HCFCD is willing to contribute this amount toward the cost to construct the control structures and equalizer structures; and

WHEREAS, it is to the mutual benefit of the WCID and the HCFCD to enter into this Agreement for the use and benefit of the public, and to facilitate the HCFCD's needs for control structures and equalizer structures.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits to the Parties, the Parties agree as follows:

I.

Within 45 days of execution of this Agreement, HCFCD will make a one-time payment to the WCID in the amount of \$1,555,924.07, which will be the maximum contribution from the HCFCD under this Agreement.

II.

The Project construction contract has been awarded by the WCID in accordance with competitive bidding laws applicable to the WCID. The WCID's determination of the lowest and best bid by a responsible bidder for construction of the Project is final and conclusive. The WCID will administer and supervise construction of the Project and pay all costs associated therewith. The Project shall be constructed in accordance with the drawings and specifications approved by the HCFCD.

III.

The WCID may make changes and amendments to the drawings and specifications within the design intent of the Project as the President of the Board of Directors of the WCID or his designee deems necessary or desirable during construction, and shall notify the Executive Director of HCFCD of all such changes and amendments within thirty (30) days after making such a change or amendment. In the event the changes or amendments result in a change in cost of the control structures, the WCID shall obtain HCFCD approval prior to proceeding with the change. Such approval shall not be unreasonably withheld. If the approved change results in a cost increase greater than the total maximum sum to be paid by the HCFCD in this Agreement, the WCID and the HCFCD agree to negotiate in good faith to amend this Agreement with approval by Harris County Commissioners Court, to provide for the payment of the additional costs. If the parties are unable to agree on an amendment to this Agreement, the WCID may elect to pay for the cost increase without additional contribution from HCFCD.

## IV.

HCFCFCD shall have access at all reasonable times to the Project construction site and to all relevant drawings, specifications, contract documents, and records in order to verify the Project is being constructed in compliance with this Agreement. Provided, however, that in conducting such investigations and/or inspections, HCFCFCD shall not interfere with the work in progress and shall comply with reasonable site safety and security protocols.

## V.

The WCID has been advised by HCFCFCD and the WCID clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that HCFCFCD shall have available the total maximum sum of One Million Five Hundred Fifty-Five Thousand Nine Hundred Twenty-Four and 07/100 Dollars (\$1,555,924.07) specifically allocated to fully discharge any and all liabilities that may be incurred by HCFCFCD pursuant to the terms of this Agreement, and that the total maximum compensation the WCID may become entitled to hereunder and the total maximum sum HCFCFCD shall become liable to pay to the WCID hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the said total maximum sum provided for in this Article and certified as available therefor by the County Auditor as evidenced by the issuance of a Purchase Order from the Harris County Purchasing Agent.

## VI.

The WCID will cause to be inserted in the construction contract for the Project an agreement that the contractor will indemnify, defend, protect, covenant not to sue, release, and save and hold harmless HCFCFCD and all its representatives from all suits, actions, or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the work or through the use of unacceptable materials in the construction of the Project or any associated improvements, or on account of any act of omission by the contractor. The WCID shall furthermore require that the construction contractor and each entity working on the Project provide insurance policies naming HCFCFCD and Tennessee Gas Pipeline, LLC as an additional insureds. Such insurance policies shall remove any exclusion for explosion, collapse and underground operations (XCU) and shall include coverage for sudden and accidental pollution liability and blanket contractual liability for the obligations assumed hereunder. Such insurance policies shall be primary to any policies of additional insureds and include waiver of subrogation in favor of additional insureds. Such insurance policies shall include not less than the minimum coverages required by HCFCFCD as stated in the attached, Exhibit D, titled "Insurance Requirements."

## VII.

If WCID terminates the Agreement for any reason, it will, in a timely manner, refund to HCFCFCD any unspent HCFCFCD funds.

## VIII.

HCFCFCD may request an audit upon completion of the Project. The WCID will refund to HCFCFCD any moneys not spent as set out herein within 30 days. If the audit determines the WCID has not spent the money as set out herein, the WCID will pay for the audit.

## IX.

Upon completion of the construction of the Project, including the control structures, the WCID shall assume the maintenance responsibility of the entire Project, including control structures, until such time that HCFCD issues Letter of Acceptance notifying the WCID that the Project, including control structures, is accepted for maintenance by HCFCD.

## X.

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the HCFCD at the following address:

Harris County Flood Control District  
9900 Northwest Freeway  
Houston, Texas 77092  
Attention: Executive Director

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the WCID at the following address:

Harris County Water Control and Improvement District No. 159  
c/o Schwartz, Page and Harding LLP  
1300 Post Oak Blvd. Suite 2400  
Houston, Texas 77056  
Attention: Mr. Mitchell Page

## XI.

Neither Party hereto shall make, in whole or in part, any assignment of the Agreement or any obligation hereunder without the prior written consent of the other Party.

## XII.

This instrument contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. Any modifications concerning this instrument shall be of no force or effect, excepting a subsequent modification in writing, signed by the Parties hereto.

EXECUTED on \_\_\_\_\_.

APPROVED AS TO FORM:

CHRISTIAN D. MENEFE  
Harris County Attorney

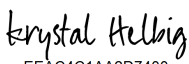
HARRIS COUNTY FLOOD CONTROL  
DISTRICT


DocuSigned by:  
  
By LAURA FIORENTINO CAHILL  
Senior Assistant County Attorney

By \_\_\_\_\_  
LINA HIDALGO  
County Judge

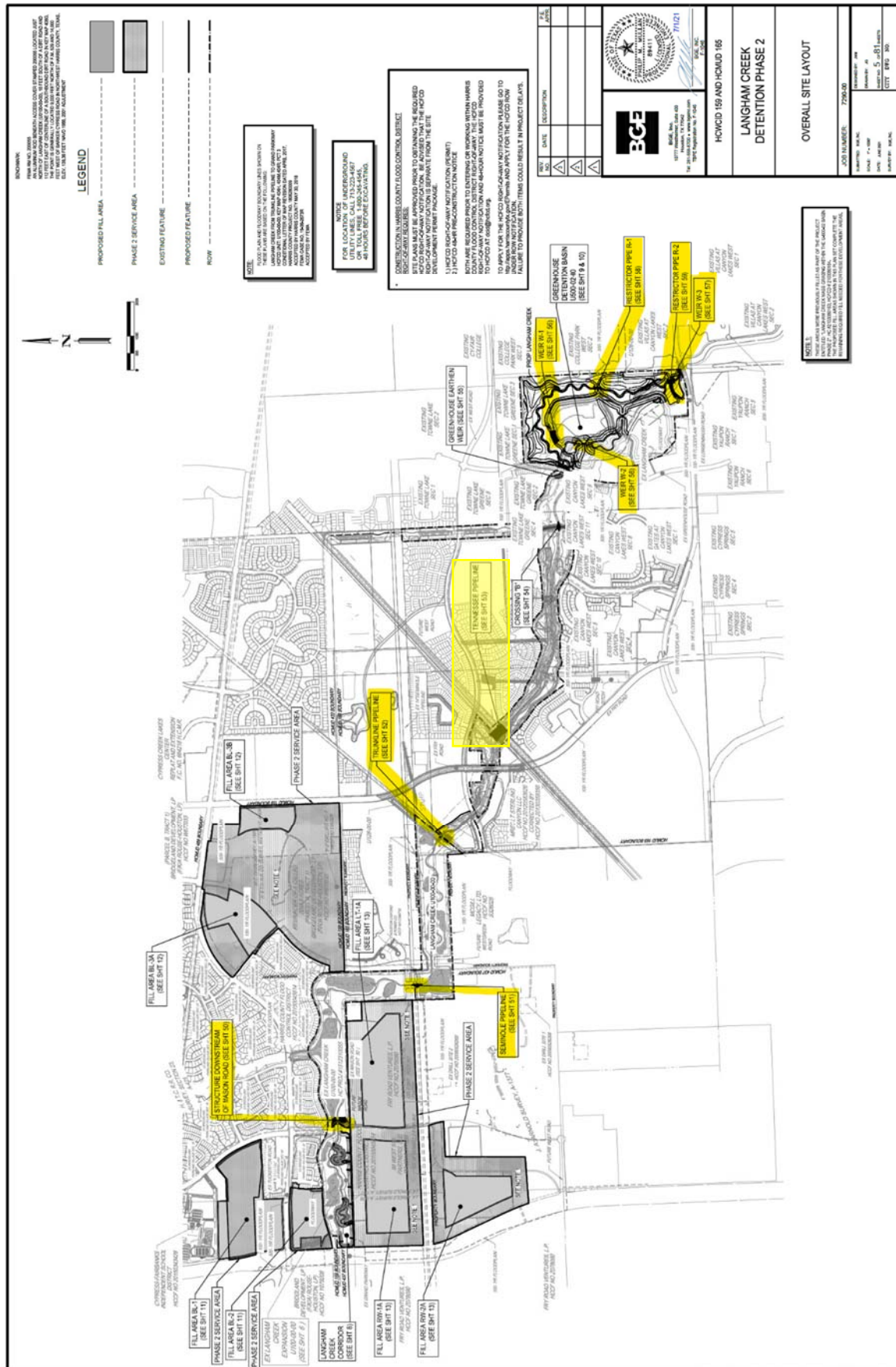
ATTEST:

HARRIS COUNTY WATER CONTROL  
AND IMPROVEMENT DISTRICT NO. 159

DocuSigned by:  
  
EEAC4C1AA2D7400...  
By: \_\_\_\_\_  
KRYSTAL HELBIG  
Secretary of the Board

DocuSigned by:  
  
D14A9B70CA3847B...  
By: \_\_\_\_\_  
BILL COOK  
President of the Board

## EXHIBIT A







**EXHIBIT C**

<b>Structures</b>	<b>Item Description</b>	<b>Construction Costs</b>
<b>Restrictor DS Mason</b>	Remove Existing 10' x 5.5' Brick Wall Plug and Replace with New 10' x 7' Concrete Restrictor for Existing 10' x 7' RCB	\$ 1,777.46
	10'x4' Restrictor	\$ 1,540.47
<b>Seminole</b>	Remove Existing 5' x 5' Brick Wall Plug for existing 10' x 5' RCB	\$ 888.73
	Remove Existing 11' x 4' Brick Wall Plug (existing 1' x 4' portion to remain) for existing 12' x 4' RCB	\$ 888.73
	Remove Existing 12' x 4' Brick Wall Plug and Replace with new 8' x 4' Concrete Restrictor for existing 12' x 4' RCB	\$ 1,007.23
	Sawcut, Remove, and Dispose of a portion of the existing reinforced concrete weir wall at elevation 147.50	\$ 3,152.10
	Sawcut, Remove, and Dispose of a portion of existing reinforced concrete trench wall at elevation 148.50	\$ 4,977.00
<b>Trunkline Crossing</b>	Remove Existing 4' x 6' Brick Wall Plug for existing 10' x 6' RCB	\$ 592.49
	Remove Existing 10' x 5' Brick Wall Plug and Replace with new 5' x 5' Concrete Restrictor for existing 10' x 5' RCB	\$ 1,777.46
	Sawcut, Remove, and Dispose of a portion of existing reinforced concrete weir wall at elevations shown on the plans	\$ 3,318.00
<b>Weir W-1</b>	8" Thick Concrete Slope Paving	\$ 310,121.20
	6" Thick Stabilized Subgrade per Geotech Recommendations	
	5" Thick Concrete Slope Paving	
	24" Thick Concrete Riprap (Gradation No. 2), including geotextile, set with flowable fill	
<b>Weir W-2</b>	5" Thick Concrete Slope Paving	\$ 26,921.70
<b>Restrictor Boxes R-1</b>	12'X10' RCB	\$ 449,527.19
	24" Thick Concrete Riprap (Gradation No. 2), including geotextile, set with flowable fill	
	Headwall with flared wingwalls and concrete apron	
	Handrail (TY B)	
	Onsite disposal of excavated material	
<b>Restrictor R-2 and Weir W-3</b>	24" Thick Concrete Riprap (Gradation No. 2), including geotextile, set with flowable fill	\$ 683,244.68
	5" Thick Concrete Slope Paving with Corrugated Finish	
	5" Thick Concrete Slope Paving	
	2' Tall Concrete Bollard	
	Handrail (TY B)	
	Headwall with flared wingwalls and concrete apron	
	11'X10' RCB	
	10'X10' RCB	
	10' x 10' Reinforced Concrete Restrictor for 10' x 10' RCB	
	11' x 3.25' Reinforced Concrete Restrictor for 11' x 10' RCB	
	Onsite Disposal of excavated material	
<b>U-1</b>	U-1 Paving	\$ 42,338.95
	U-1 Riprap	
	U-1 CMP	
<b>U-2</b>	U-2 Paving	\$ 11,252.50
	U-2 Riprap	
	U-2 CMP	
<b>U-3</b>	U-3 Paving	\$ 12,598.18
	U-3 Riprap	
	U-3 CMP	
<b>TOTAL</b>		<b>\$ 1,555,924.07</b>



**EXHIBIT D****Contractor Insurance Requirements**

- 1.1 Coverage and Limits. During the Term of this Agreement and any extensions thereto, Contractor at its sole cost and expense shall provide insurance of such type and with such terms and limits as may be reasonably associated with this Agreement. As a minimum, Contractor shall provide and maintain the following coverage and limits:

- (a) Workers Compensation, as required by the laws of Texas, and Employers' Liability, as well as All States, United States Longshore & Harbor Workers Compensation Act and other endorsements, if applicable to the Project, and in accordance with state law.

Employers' Liability

(i)	Each Accident	\$1,000,000
(ii)	Disease – Each Employee	\$1,000,000
(iii)	Policy Limit	\$1,000,000

- (b) Commercial General Liability, including but not limited to, the coverage indicated below. This policy will provide coverage for personal and bodily injury, including death, and for property damage, and include an endorsement for contractual liability. Coverage shall not exclude or limit the Products/Completed Operations, Contractual Liability, or Cross Liability. Where exposure exists, HCFCD may require coverage for watercraft, blasting, collapse, explosions, blowout, cratering, underground damage, pollution, and other coverage. *HCFCD and Tennessee Gas Pipeline, LLC shall be named an Additional Insured on primary/non-contributory basis.*

(i)	Each Occurrence	\$1,000,000
(ii)	Personal and Advertising Injury	\$1,000,000
(iii)	Products/Completed Operations	\$1,000,000
(iv)	General Aggregate (per project)	\$2,000,000

- (c) Professional Liability/Errors and Omissions, if applicable, in an amount not less than One Million Dollars (\$1,000,000) per claim and in the aggregate.
- (d) Umbrella/Excess Liability in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and in the aggregate. *HCFCD and Tennessee Gas Pipeline, LLC shall be named an Additional Insured on primary/non-contributory basis.*
- (e) Automobile Liability insurance to include Contractor's liability for death, bodily injury, and property damage resulting from Contractor's activities covering use of owned, hired, and non-owned vehicles, with combined single limit of not less than One Million Dollars (\$1,000,000) for each accident. *HCFCD and Tennessee Gas Pipeline, LLC shall be named Additional Insured on primary/non-contributory basis.*

- (f) Any other coverage required of Contractor pursuant to statute.

- 1.2 Delivery of Policies. Immediately upon execution of this Agreement and before any Services are commenced by Contractor, Contractor shall provide HCFCD evidence of all of the above coverage on forms and with insurers acceptable to HCFCD. Contractor must maintain a valid Certificate of Insurance as described herein on file with HCFCD at all times during the term of this Agreement. Contractor must either (1) mail the Certificate of Insurance to the Harris County Flood Control

District at 9900 Northwest Freeway, Houston, TX 77092, Attn: Contract Management or (2) submit it by email to HCFCFCD\_AdminServices@hcfcd.org.

1.2.1 Issuers of Policies. Coverage shall be issued by company(s) licensed by the Texas Department of Insurance to do business in Texas, unless said coverage is not available or economically feasible except through an excess or surplus lines company, in which case the company(s) should be registered to do business in Texas. Companies shall have an A.M. Best rating of at least A-VII.

1.2.2 Certificates of Insurance. Contractor shall provide unaltered Certificates of Insurance which evidence the required coverage and endorsements and satisfy the following requirements:

- (a) Be less than 12 months old;
- (b) Include all pertinent identification information for the Insurer, including the company name and address, policy number, NAIC number or AMB number, and an authorized signature;
- (c) Include the Project name and reference numbers and indicates the name and address of the Project Manager in the Certificate Holder Box; and
- (d) Be appropriately marked to accurately identify:
  - (i) All coverage and limits of the policy;
  - (ii) Effective and expiration dates;
  - (iii) Waivers of subrogation, endorsement of primary insurance and additional insured language, as described herein.

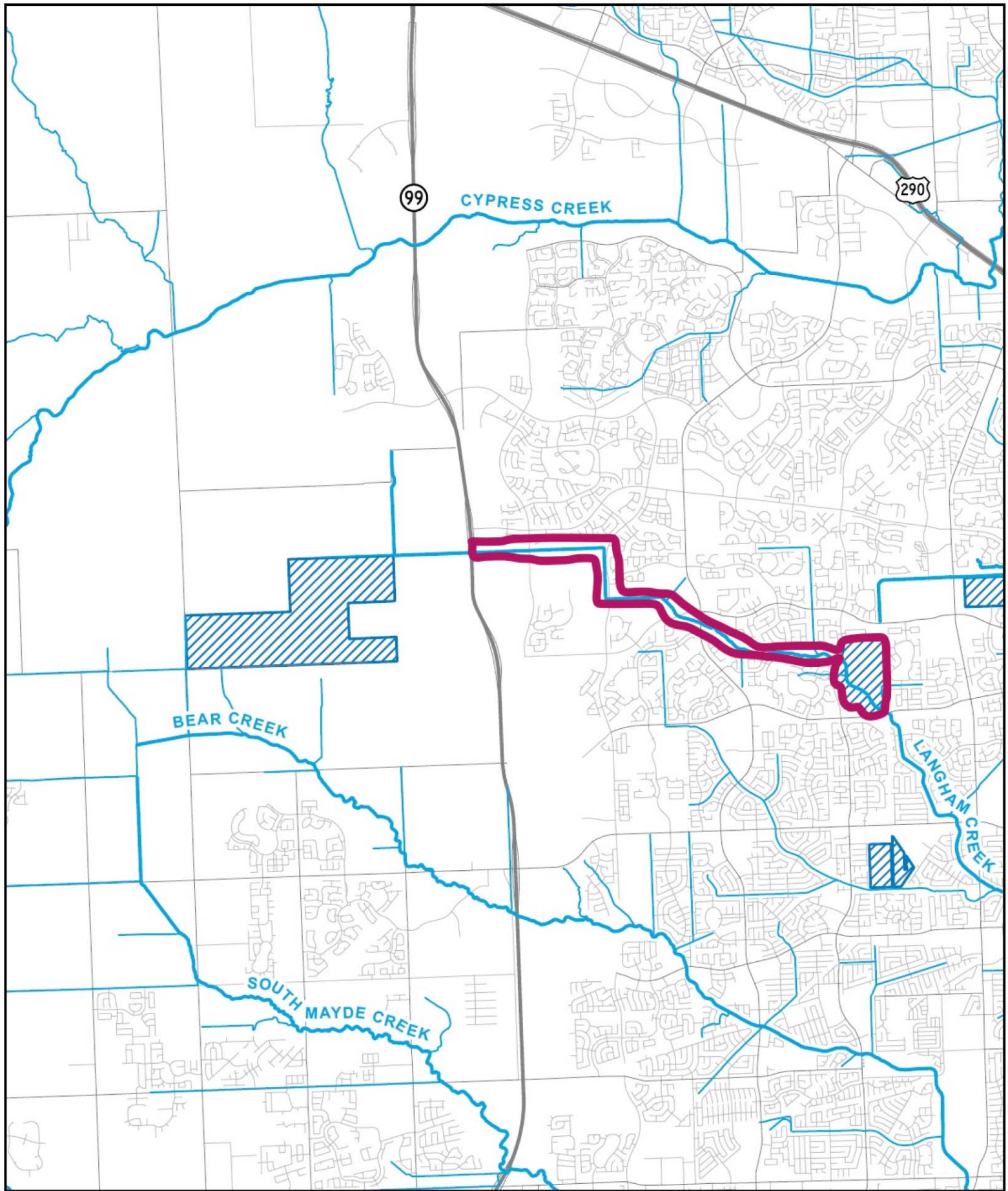
1.2.3 Certified Copies of Policies and Endorsements. Upon request, Contractor shall furnish certified copies of insurance policies and endorsements to HCFCFCD.

1.2.4 Renewal Certificates. Renewal certificates are due to HCFCFCD at least thirty (30) days prior to the expiration of the current policies.

1.2.5 Subcontractors. If any part of the Agreement is sublet, insurance shall be provided by or on behalf of any subcontractor, and shall be sufficient to cover their portion of the Agreement. Contractor shall furnish evidence of such insurance to HCFCFCD as well.

1.3 Additional Insured. Contractor shall include HCFCFCD and Tennessee Gas Pipeline, LLC and their respective officers, directors, agents, and employees as an Additional Insured on the Commercial General Liability, Automobile Liability, and Umbrella/Excess Liability insurance certificates. Contractor's coverage shall be primary insurance to any similar insurance maintained by HCFCFCD and must contain an endorsement stating such. Coverage to HCFCFCD and Tennessee Gas Pipeline as an Additional Insured on any of Contractor's insurance coverage shall not be subject to any deductible.

- 1.4 Deductibles. Contractor shall be responsible for and pay any claims or losses to the extent of any deductible amounts applicable under all such policies and waives any claim it may have for the same against HCFCD, its officers, directors, agents, or employees.
- 1.5 Claims-made Policies. All insurance policies written on a claims-made basis, including Professional Liability/Errors and Omissions, shall be maintained for a minimum of two (2) years following completion of all services under this Agreement (“Extended Reporting Period”). Contractor shall obtain or maintain full prior acts coverage at least to the effective date of this Agreement in the event of a carrier or policy change.
- 1.6 Waiver of Subrogation. Contractor waives any claim or right of subrogation to recover against HCFCD and Tennessee Gas Pipeline, LLC, their officers, directors, agents, and employees (“Waiver of Subrogation”). Each policy required under this Agreement must contain a Waiver of Subrogation endorsement.
- 1.7 Notice of Cancellation, Non-Renewal, or Material Change. Contractor shall provide HCFCD with thirty (30) days’ minimum written notification in the event of cancellation, non-renewal, or material change to any or all of the required coverage.
- 1.8 Remedies for Noncompliance. Failure to comply with any part of this Section is a material breach of this Agreement. Contractor could immediately, and without notice, have all compensation withheld or suspended, be suspended from providing further Services, or be terminated from this Agreement for any lapse in coverage or material change in coverage which causes Contractor to be in noncompliance with the requirements of this Section.



**Project ID: U100-00-00-E009**

**Watershed: Addicks Reservoir**

**Precinct: 3, 4**