

BDY NATURAL SCIENCES CONSULTANTS

May 13, 2022

via electronic mail

City of Crossville
c/o Mr. Kevin Young
329 North Main Street
Crossville, Tennessee 38555

Re: Consulting Agreement Proposal
Phase II of the Baseline Environmental Assessment
City of Crossville, Tennessee Water Supply Project
Wauford Project No. 4637-P3

Dear Mr. Young:

Per your request, BDY Environmental LLC (BDY) presents this summary of previously completed services associated with this project and a fee proposal to provide environmental consulting services that are outlined in the Request for Fee Proposal in Appendix 1.

PHASE I SCOPE OF WORK RECONCILIATION

Per the agreement with the City of Crossville signed July 1, 2020, a lump sum fee of \$58,922 was approved for the following itemized scope of work:

- Project Kickoff Meeting
- Desktop Review and Preparation
- Field Assessments to collect data necessary to perform a Hydrologic Determination (Tennessee Department of Environment and Conservation (TDEC) Rule 0400-40-03-.05(9) et. seq.) and estimate the approximate number and size of potential wetlands
- Acoustic Survey for Listed Bats
- Hydrologic Determination Document Preparation & Submittal
- Regulatory Meeting On-Site
- Phase II Scoping

The Acoustic Survey for Listed Bats was not performed during Phase I due to indications by the U.S. Fish and Wildlife Service (USFWS) that it might not be required. However, a reconnaissance survey was conducted prior to the indication by the USFWS that the acoustic survey might not be required.

An Approved Jurisdictional Determination Request (AJD) was prepared for unnamed tributaries of Meadow Creek and submitted to the U.S. Army Corps of Engineers (USACE). This task was originally planned for Phase II but was performed during Phase I.

PHASE II SCOPE OF WORK

1) Complete Waters of the U.S. Delineation Report and TDEC Hydrologic Determination

a) General

A Complete Waters of the U.S. Delineation Report shall be prepared in accordance with the requirements of the Components of a Complete Waters of the U.S. Delineation Report (Nashville District) dated February 2017 and its appendices. This report shall include components for delineated wetlands, Approved Jurisdictional Determinations and TDEC Hydrologic Determinations. This report will be prepared following site visits to observe, document and score pertinent reaches of the resources within the “permit review area”.

b) Wetland Delineation

The boundaries of wetlands within the “permit review area” shall be delineated. The purpose of the delineations is to determine the areal extent of jurisdictional wetlands that would need to be avoided or otherwise permitted in regard to the proposed site development. The wetland delineations will be conducted per guidelines established in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0). The boundaries of delineated wetlands will be marked in the field with either pin flags or flagging labeled “Wetland Boundary”. The areal extent of each feature will be recorded utilizing a high-resolution GPS unit. The documented findings will be summarized in a narrative report, which will include wetland data sheets, photographs, and maps. This report will be provided to TDEC as a supplement to the previously submitted hydrologic determination request.

c) Approved Jurisdictional Determination

An updated AJD request will be submitted to the USACE, which will include the narrative summary of the wetland delineation and supporting data. This request will supplement the previously submitted request for 47 water course reaches submitted to the USACE under a cover letter dated January 27, 2022.

The proposed Phase II scope shall include requesting the removal of some delineated ephemeral streams from the AJD request that can be considered erosional features. The AJD is definitive and legally-determinative of aquatic resources that are jurisdictional under the Clean Water Act. The AJD request will consist of a letter report documenting the presumptive basis regarding the federal jurisdictional status of water features. The AJD request, along with background data including climate, soils and historic aerial imagery will be prepared using the USACE guidance document Components of a Complete Waters of the U.S. Delineation Report (Nashville District) dated February 2017. The scope of work includes accompanying USACE personnel on the AJD field visit and offering data to support presumptions of the jurisdictional status of aquatic resources. Based on the AJD field visit and comments by the USACE, the AJD request will be revised and resubmitted as necessary.

2) Rare, Threatened, or Endangered Species

The scope of work for the rare, threatened, or endangered (RTE) species under Phase II of the baseline environmental assessment incorporates the outcome of a discussion with Robbie Sykes and Nicole Sikula of the USFWS during the on-site regulatory meeting with regulatory agencies on March 31, 2022. This scope includes:

a) Acoustic Survey for Listed Bat Species

BDY will conduct a presence/absence survey for listed bat species, unless information provided by the USFWS as new regulations are promulgated, indicates that the presence/absence survey is not necessary or should be postponed until a later date. The surveys will consist of 42 detector nights on the referenced property during May 15 – August 15, 2022, to determine use of the habitat by listed bat species. Two detectors will be deployed for 21 calendar nights in areas of suitable summer habitat where bats are likely to forage or commute. The sampling period will begin at sunset and end at sunrise the next day. In the event of a rainout, BDY will conduct an additional site visit to deploy detectors.

BDY will conduct analysis using Kaleidoscope Pro, to determine presence of the Indiana and northern long-eared bat. If presence is considered likely at either site, BDY will conduct qualitative analysis of probable Indiana/northern long-eared bat calls. Calls will be manually vetted by a qualified acoustic surveyor. Documentation will include field notes, photographs of detector locations and approximate zone of detection, GPS coordinates for acoustic files, and results and analysis of the acoustic ID program. Our findings will be reported and discussed with you and the USFWS.

b) Preparation of Incidental Take Permit for American Bald Eagle

BDY will prepare application materials for an incidental take permit for the American bald eagle. Our scope will include preparing and submitting a USFWS Eagle Incidental Take Permit application, including all necessary maps and exhibits, project descriptions, and mitigation plans. BDY will consult with the Tennessee Wildlife Resources Agency (TWRA) to ensure that the permitted activity is in compliance with applicable state laws and regulations. Our scope includes meeting with project principals and agency personnel, as required. This scope does not include the application processing fee or post-activity monitoring and reporting. If necessary, a separate scope for monitoring and reporting may be prepared upon your request.

c) Consultation with USFWS

any additional reports or information that will be needed to increase the probability that the U.S. Fish and Wildlife Service will not provide opposition to the approval of the anticipated Department of the Army Section 404 permit application.

May 13, 2022
Mr. Kevin Young

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FEE RECONCILIATION FOR PHASE I SCOPE OF WORK

The approved lump sum fee for Phase I Scope of Work	\$58,922.00
The reduction for exclusion of Acoustic Survey	(\$9,391.80)
Total amount paid to date	(\$44,255.20)
Original Phase I Lump Sum amount remaining due to BDY is	\$5,275.00*
Additional work performed on AJD for watercourses	\$1,014.00 [#]

*This amount less \$2,410.00 invoiced on April 4, 2022

[#]Unbilled work performed outside of Phase I Scope of Work to be included in Phase II

PROPOSED FEES FOR PHASE II SCOPE OF WORK

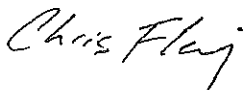
Wetland Delineation Field Work	\$43,000
Approved Jurisdictional Determination and TDEC Delineation Report	\$13,800
Acoustic Survey for Listed Bat Species and Reporting	\$24,500
Permit Preparation and Consultation for American bald eagle disturbance	\$2,500
Onsite Regulatory Meetings	\$2,700
Preparation of AJD for Watercourses performed under Phase I Scope	\$1,014
Total Lump Sum Fee	\$87,514

These proposed fees assume that BDY will be provided free use of a motorized boat or similar transportation during field investigations. BDY will work with the City of Crossville to ensure that the dates of anticipated use are known by both parties well in advance.

BDY will submit monthly invoices to the Client on a lump sum, percent complete basis, using the foregoing task budgets. All work is expected to be completed within three (3) months of Notice to Proceed.

We appreciate very much the opportunity to be of service to you. Please contact us at (615) 460-9797 if you require further information.

Very truly yours,
BDY Environmental, LLC



Chris A. Fleming, MS
Senior Scientist



Sara E. Samoray, MS
Project Scientist

**APPENEDIX 1: Request for Fee Proposal to Perform Phase II of the Baseline
Environmental Assessment for the City of Crossville, Tennessee Water Supply Project**

Request for Fee Proposal
to Perform
Phase II of the Baseline Environmental Assessment
for the
City of Crossville, Tennessee
Water Supply Project
Wauford Project No. 4637-P3

A. Scope of Work

1. General

Phase I of the baseline environmental assessment was originally intended to include the following items:

- a. Project Kickoff Meeting
- b. Desktop Review and Preparation
- c. Field Assessments to collect data necessary to perform a Hydrologic Determination (TDEC Rule 0400-40-03-.05(9) et. seq.) and estimate the approximate number and size of potential wetlands
- d. Acoustic Survey for Listed Bats
- e. Hydrologic Determination Submittal
- f. Regulatory Meeting On-Site
- g. Phase II Scoping

A portion of this work was to be performed by BDY Environmental, LLC and a portion was to be performed by Ecosystem Planning and Restoration, LLC under separate independent agreements with the City of Crossville.

Phase II of the baseline environmental assessment was originally intended to include the following items:

- a. Wetland Delineations
- b. A Complete Waters of the U.S. Delineation Report
- c. Requests for Approved Jurisdictional Determinations or Preliminary Jurisdictional Determinations as appropriate
- d. Functional Loss Determinations using the Tennessee Stream Quantification Tool

Some of the agreed Phase I scope of work has been deferred until the proposed Phase II scope is undertaken, and some of the proposed Phase II scope was undertaken during Phase I. The Acoustic Survey for Listed Bats was not performed during Phase I due to indications by the U.S. Fish and Wildlife Service that it might not be required. The amount of \$10,460 was allocated by BDY Environmental,

LLC to perform the Acoustic Survey for Listed Bats which included a site reconnaissance survey to determine the appropriate locations for acoustic sensors. This reconnaissance survey was conducted prior to the indication by the U.S. Fish and Wildlife Service that the acoustic survey might not be required. The amount of \$1,068.20 was charged for this reconnaissance survey leaving the amount of \$9,391.80 uncharged. The Approved Jurisdictional Determination Request for unnamed tributaries of Meadow Creek was originally planned for Phase II but was performed during Phase I with the understanding that the fee for this activity would be paid as part of the Phase II fee.

2. Complete Waters of the U.S. Delineation Report and TDEC Hydrologic Determination

a. General

A Complete Waters of the U.S. Delineation Report shall be prepared in accordance with the requirements of the *Components of a Complete Waters of the U.S. Delineation Report* (Nashville District) dated February 2017 and its appendices. This report shall include components for delineated wetlands, Approved Jurisdictional Determinations and TDEC Hydrologic Determinations. This report will be prepared following site visits to observe, document and score pertinent reaches of the resources within the “permit review area”.

b. Wetland Delineation

The boundaries of wetlands within the “permit review area” shall be delineated. The purpose of the delineations is to determine the areal extent of jurisdictional wetlands that would need to be avoided or otherwise permitted in regard to the proposed site development. The wetland delineations will be conducted per guidelines established in the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0)*. The boundaries of delineated wetlands will be marked in the field with either pin flags or flagging labeled “Wetland Boundary”. The areal extent of each feature will be recorded utilizing a high-resolution GPS unit. The documented findings will be summarized in a narrative report, which will include wetland data sheets, photographs and maps.

c. Approved Jurisdictional Determination

Based upon the wetland delineation narrative report, an Approved Jurisdictional Determination (AJD) request will be submitted to the USACE. This request will be a companion request to the Approved

Jurisdictional Determination request for 47 water course reaches submitted to the USACE under covering letter dated January 27, 2022. The proposed Phase II scope shall include requesting the removal of some delineated ephemeral streams from the AJD request that can be considered erosional features. The AJD is definitive and legally-determinative of aquatic resources that are jurisdictional under the Clean Water Act. The AJD request will consist of a letter report documenting the presumptive basis regarding the federal jurisdictional status of water features. The AJD request, along with background data including climate, soils and historic aerial imagery will be prepared using the USACE guidance document *Components of a Complete Waters of the U.S. Delineation Report* (Nashville District) dated February 2017. The scope of work includes accompanying USACE personnel on the AJD field visit and offering data to support presumptions of the jurisdictional status of aquatic resources. Based on the AJD field visit and comments by the USACE, the AJD request will be revised and resubmitted as necessary.

3. Functional Loss Determination

The Tennessee Stream Quantification Tool (TN SQT) and the Tennessee Debit Tool shall be used to calculate an existing conditions score and functional loss for each stream reach that will be impacted as referenced at TDEC Document DWR-NR-G-01 Stream Mitigation Guidelines effective May 20, 2019. Tennessee Debit Tool Option 1 will be utilized and all required parameters and metrics will be measured and reported. All field sheets and workbooks shall be provided as a deliverable. The proposed Phase II scope shall include a follow-up to the request to group streams together for the purposes of the TN SQT and Tennessee Debit Tool evaluations made to the Tennessee Department of Environment and Conservation, Division of Water Resources, Natural Resources Section during the on-site meeting with regulatory agencies on March 31, 2022.

4. Rare, Threatened and Endangered Species

The scope of work included in the proposal to perform Phase II of the baseline environmental assessment shall incorporate the outcome of discussion with Robbie Sykes and Nicole Sikula of the U.S. Fish and Wildlife Service during the on-site regulatory meeting with regulatory agencies on March 31, 2022. This scope shall include:

- a presence/absence survey for listed bats between May 15 and August 15, 2022 unless information provided by the U.S. Fish and Wildlife Service as new regulations are promulgated indicates that the presence/absence survey is not necessary or should be postponed until a later date;

- initiation of the permitting process related to proposed impact on the active nesting American bald eagle pair in the permit review area; and
- any additional reports or information that will be needed to increase the probability that the U.S. Fish and Wildlife Service will not provide opposition to the approval of the anticipated Department of the Army Section 404 permit application.

B. Proposed Fee

BDY Environmental, LLC and Ecosystem Planning and Restoration, LLC are requested to each provide a lump sum fee to perform the various portions of the scope of work described at Paragraph A that are within their respective areas of expertise, along with any specific exclusions desired from the scope of work. If additional scope of work items are expected to be required in order to support an approvable Department of the Army Section 404 permit application and an approvable request for a Section 401 Water Quality Certification, please itemize the additional scope of work items and provide in the lump sum fee amount amounts to cover each additional scope of work item.

Provide a list of exclusions that your firm would expect to be included in any consulting services agreement entered into to perform the scope of work described at Paragraph A.

BDY Environmental, LLC is requested to formally state that the lump sum fee agreed to for Phase I will be reduced by \$9,391.80 to \$49,530.20 for the elimination of the Acoustic Survey for Listed Bats originally included in the scope of work for Phase I and to list the fee amount associated with submitting the Approved Jurisdictional Determination request for 47 water course reaches to the U.S. Army Corps of Engineers under their covering letter dated January 27, 2022.

**CONSULTANT'S AGREEMENT
FOR THE PROVISION OF ENVIRONMENTAL SERVICES**

by and between

BDY ENVIRONMENTAL, LLC hereinafter referred to as the CONSULTANT doing business at 2607 Westwood Drive Nashville, TN 37204	CITY OF CROSSVILLE hereinafter referred to as the CLIENT doing business at ATTN: Tim Begley, City Engineer 392 N Main Street Crossville, TN 38555
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CONSULTANT agrees to provide technical services as set forth in the attached Proposal, which will involve providing technical assistance and other services as requested by the CLIENT for purposes of evaluating environmental conditions relating to property uses, or in support of other professional services. CONSULTANT will be compensated in the manner set forth under the Section entitled "COMPENSATION."

SCOPE OF SERVICES

The Scope of Work included in the attached Proposal is included herein by reference as the Scope of Services.

COMPENSATION

Compensation for CONSULTANT'S execution of the proposed Scope of Work will be a LUMP-SUM PAYMENT of \$\$87,514. CONSULTANT will submit monthly invoices to the CLIENT on a lump sum, percent complete bases, using the foregoing task budgets. CONSULTANT will be subject to the Terms and Conditions, Exhibit A, the same as the CLIENT.

SUBMISSION OF INVOICES AND PROMPT PAYMENT

The CONSULTANT will submit to the CLIENT a billing invoice monthly. Invoices for CONSULTANT'S charges will be sent to the address indicated above. Should the CLIENT wish an interim estimate of costs associated with the CONSULTANT'S efforts, the CONSULTANT will supply such a statement within ten days of having received such a written request from the CLIENT. All invoices will contain an accounting of the number of labor-hours expended on behalf of CLIENT by CONSULTANT'S staff, and will include a brief explanation of the efforts undertaken. Prompt payment will be made to the CONSULTANT within 30 days of receipt of invoices.

INSURANCE REQUIREMENTS

CONSULTANT agrees to provide at its own expense the following minimum insurance coverage for the duration of this agreement:

- a. Workmen's compensation and employee's liability insurance in accordance with statutory limits.

- b. Comprehensive general liability insurance including products completed, contractual, property, and personal injury coverage of not less than \$1,000,000 for each occurrence, Combined Single Limit, or its equivalent, with excess liability of \$1,000,000 for each occurrence and in the aggregate.
- c. Automobile liability insurance including non-owned and hired autos with Combined Single Limit of \$1,000,000.
- d. Professional liability insurance with limits of \$1,000,000 per claim and per occurrence.
- e. CLIENT shall be named as "additional insured" on all policies except Worker's Compensation and Professional Liability insurance.

OTHER CONDITIONS

The CONSULTANT acknowledges that the work for which the CONSULTANT is being retained shall be kept strictly confidential, and CONSULTANT shall not disclose to any third party other than the CLIENT'S officers, employees, and any agents, and facts known or discovered, or opinions currently held, or subsequently formed in regard to the subject matters of work to be performed hereunder unless first authorized to do so by an officer, employee, or agent of the CLIENT, or if compelled to do so by a court of competent jurisdiction.

AGREED THIS ____ DAY OF _____, 2022

CLIENT:

City of Crossville

By: _____

Name:

Title:

CONSULTANT:

BDY Environmental, LLC

By: _____

Name:

Title:

EXHIBIT A
TERMS AND CONDITIONS

TERMS AND CONDITIONS

1. CONSULTANT'S Scope of Work provided to the CLIENT or representatives of the CLIENT will be limited to those tasks described in the attached Proposal. Additional tasks not described in the Proposal will be provided to the CLIENT, if requested, under a separate proposal and Agreement.
2. If, as the Project progresses, the facts uncovered require alteration the Scope of Work and consequently the cost of completion, the CONSULTANT will inform the CLIENT of such situation so that negotiations of change in scope and fees can be accomplished as required.
3. CONSULTANT'S fees for the Scope of Work described in the accompanying Proposal will consist of a single LUMP-SUM charge as stated in the Proposal and which will be billed after the completion of the Scope of Work. Payment from CLIENT is due within 30 days of receipt of CONSULTANT'S invoice.
4. This Proposal to perform services for this Project shall remain open for acceptance for a period of sixty (60) days from the date thereof, after which time CONSULTANT reserves the right to review, revise or withdraw its Proposal.
5. All reports, drawings, plans, or documents (or copies thereof) in any form prepared by CONSULTANT under this Agreement are prepared for the sole and exclusive benefit of the CLIENT. CONSULTANT shall, in all events, retain full possession and ownership of its field and project notes. All reports, drawings, plans, or other documents (or copies) furnished to CONSULTANT by CLIENT, or prepared by CONSULTANT for CLIENT, shall at CLIENT'S written request, be returned upon completion of the Services hereunder. CONSULTANT may retain one (1) copy of all such documents.
6. This Contract may be terminated by either Party for reason or for no reason by giving thirty (30) days written notice to the other Party. Said notice shall be sufficient if it is delivered to the Party personally or mailed by certified mail to the Party's mailing address. Upon any termination under this paragraph, CONSULTANT will prepare a final invoice following the date of a final termination notice which date shall be the "Effective Date of Termination." Where the method of payment is based on time and materials, the final invoice will be based on reimbursement for all services and expenses associated with the Project up to the Effective Date of Termination.
7. Neither CONSULTANT nor CLIENT shall be liable to the other for any damages whatsoever caused by termination of this Contract, except for fees for services actually performed and costs and commitments actually incurred by CONSULTANT under this Contract, prior to the Effective Date of Termination. In no event shall either Party be liable to the other for any other claim arising from termination of this Contract, direct, indirect, special, incidental, or consequential damages (including loss of profits) whether based on contract, tort, or another legal theory.
8. The Parties to this Contract agree to make the submission to mediation of any dispute or controversy arising out of this Contract, as set forth herein, an express condition precedent to any legal or equitable action or proceeding of any nature whatsoever. All disputes between the Parties to this Contract arising out of or in connection with this Contract shall be referred for mediation to a mediator who is mutually acceptable to all Parties subject to the dispute. Each Party to all disputes submitted for mediation shall pay an equal share of the costs and fees charged by the mediator.
9. This Contract shall be governed by and interpreted in accordance with the laws of the State of Tennessee. It is agreed by and between the Parties that this agreement was executed in the state of Tennessee, United States of America.
10. This agreement, and any specified attachment, or exhibits attached constitute the entire agreement between CONSULTANT and CLIENT and all promises, representations, understandings, and agreements with the respect to the subject matter hereof and inducements to the making of this agreement relied upon by either Party have been expressed herein, and may not be altered, amended, or modified unless in writing executed by the Parties hereto.

11. Neither this agreement nor any interest herein may be assigned by the CLIENT or CONSULTANT without the other party's prior written consent. No Party shall be liable for delay in the performance hereunder do to causes beyond their control, including, but not limited to, acts of God, fire strikes, acts of war, or the intervention of governmental authority, but any such failure shall be remedied as soon as reasonably possible.
12. Each Party executes this Agreement as an independent contractor and nothing herein shall be construed to form a joint venture, partnership, or any similar form of association. As such, CONSULTANT shall be solely responsible for the conduct, acts or omissions of its employees, agents, and subcontractors who perform any services in connection with this Agreement.
13. CONSULTANT will perform Services and make recommendations in accordance with the following: (i) currently accepted professional practices and standards for firms engaged in similar work, (ii) using personnel and equipment suitable therefore, and (iii) subject to CLIENT'S reasonable standards and specifications communicated to CONSULTANT in writing prior to beginning the services. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED.
14. CONSULTANT and CLIENT shall mutually indemnify and save each other harmless from and against loss, damage, injury, costs (including attorney's fees and cost of investigation), or liability to the extent arising from their own negligent acts or omissions or willful misconduct and that of their respective employees subcontractors, and agents acting in the course and scope of their employment and in connection with the subject matter of this Agreement.
15. As part of the consideration CONSULTANT requires for the provision of the services indicated herein, CLIENT agrees that any claim for damages filed against CONSULTANT by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against CONSULTANT or its successors or assigns and that no individual person shall be made personally liable for damages, in whole or in part. CLIENT's sole and exclusive remedy for any alleged breach of CONSULTANT's standard of care hereunder shall be to require CONSULTANT to re-perform any defective services. The total liability of CONSULTANT for liabilities, claims, judgments, demands, and causes of action arising under or related to this Agreement, whether based in contract or tort, shall be limited to the total compensation actually paid to CONSULTANT for services or \$50,000, whichever is less. All claims by CLIENT shall be deemed relinquished unless filed within one (1) year after substantial completion of services.