



**RESOLUTION NO. 20200324-07**

**A CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES WITH CARDNO, INC.**

**WHEREAS**, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

**WHEREAS**, TexAmericas Center has sought, through a competitive solicitation process, Statement of Qualifications for Wetlands Delineation services; and

**WHEREAS**, Cardno, Inc. submitted a satisfactory proposal and has the necessary experience and expertise to provide Wetlands Delineation and associated mitigation services to TexAmericas Center; and

**WHEREAS**, TexAmericas Center has determined this firm to be qualified to perform these services;

**NOW, THEREFORE, BE IT RESOLVED** that the Executive Director/CEO shall be and he is here by authorized to enter into a professional service contract with Cardno, Inc. to provide Wetlands Delineation and associated mitigation services for TexAmericas Center on terms substantially the same as attached hereto.

**PASSED AND APPROVED THIS 24<sup>th</sup> day of March, 2020.**

A handwritten signature in blue ink that reads "Boyd W. Sartin".

**Boyd Sartin, Chairman of the Board**

**ATTEST:**

A handwritten signature in blue ink that appears to be "Ben King".

**Ben King, Secretary**

**ATTACHED: FY20 Professional Services Agreement**



**PROFESSIONAL SERVICES AGREEMENT  
(Engineer)**

This Agreement between TexAmericas Center (hereinafter referred to as "Client") and Cardno, Inc. (hereinafter referred to as "Engineer") is effective as of the 24<sup>th</sup> day of March, 2020. The parties agree as follows:

**WHEREAS**, the Client desires to engage ENGINEER to provide wetland delineation and associated mitigation services; and

**WHEREAS**, ENGINEER desires to render certain services as described in authorized work orders as may be hereafter issued and has the experience and staff to perform those services;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

Section 1. Services. The Client hereby agrees to engage ENGINEER, and ENGINEER hereby agrees to perform certain services for the Client as agreed upon from time to time. Such services shall be set forth in individual work orders as may be hereafter authorized in writing by the Client and accepted by ENGINEER. The terms and conditions of this Agreement shall apply to each Work Order, except to the extent expressly modified by the Work Order.

Section 2. Client's Responsibilities. The Client agrees to provide ENGINEER with all existing data, plans, and other information in the Client's possession which are necessary for the performance of Services as well as right of entry for ENGINEER's personnel and all necessary equipment to the site(s). The Client further agrees to provide any additional data, plans, or other information as may be specified in authorized work orders.

Section 3. Standard of Care and Warranty. ENGINEER agrees that its Services will be performed with that level of professional care and skill ordinarily exercised by members of the profession currently practicing under similar conditions and circumstances. **NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE.** ENGINEER will not be responsible for the interpretation or use by persons or entities other than Client of data developed by ENGINEER.

Section 4. Safety. ENGINEER is responsible for the safety on site of its own employees. This provision shall not be construed to relieve Client or any of its vendors, or other contractors from their responsibility for maintaining a safe worksite. Neither the professional services of ENGINEER, nor the presence of ENGINEER's employees and subcontractors shall be construed to imply ENGINEER has any responsibility for any activities on site performed by personnel other than ENGINEER's employees or subcontractors.

Section 5. Time of Performance. ENGINEER agrees to perform the Services within schedules as set forth in authorized work orders. ENGINEER shall not be responsible for delays in the work caused by Client or its agents, consultants, or contractors. Standby or non-productive time for

delays in our work caused by Client will be charged as work time unless provided for as a separate item in the work order.

Section 6. Compensation. For ENGINEER's performance and completion of all services, Client shall compensate as specified in authorized work orders. Such rates include labor, overhead, expenses, and profit.

Section 7. Payment. ENGINEER shall invoice Client for Services performed on a monthly basis. Each invoice is due on presentation, is payable in Bowie County, Texas, and is past due thirty (30) days from invoice date. Client agrees to pay interest equal to one percent (1%) plus the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year, or the next day thereafter if July 1 falls on a Saturday or Sunday. Invoices for Services performed on a time-and-materials basis will be submitted showing labor (hours worked) and total expenses. If requested by the Client, documentation will be provided by ENGINEER at the cost of providing such documentation including labor and copying costs. Any attorneys' fees, court costs, collection fees or other costs incurred in collecting any uncontested delinquent amounts shall be paid by Client.

Payment of the fees provided for in this Contract are subject to the availability of annual appropriations by the Client, which is a political subdivision of the State of Texas. Client shall use its best efforts to obtain and appropriate funds for payment of the sums due ENGINEER under this Agreement.

Section 8. Notices. Communications from the Client shall be to ENGINEER's designated project manager or principal-in-charge of the work. Oral communications shall be confirmed in writing. Communications from ENGINEER to Client regarding the scope of work and/or day-to-day activities shall be to the Executive Vice President/Chief Operations Officer. Communication from ENGINEER to Client regarding legal and/or contractual items shall be to Client's Executive Director.

Section 9. Cost Estimates. All cost estimates provided in association with services, either prior to accomplishment or during same, are based on a scope of services provided with same. It is expressly understood by Client and ENGINEER that any change to said scope of services, may directly impact the cost of same. In the event that significant changes in scope are requested by Client, ENGINEER shall notify Client in writing of the potential increase in costs associated with same and provide additional work orders as needed to address same.

Section 10. Confidentiality. ENGINEER shall maintain as confidential and not disclose to others without Client's prior written consent, all information obtained from Client, not otherwise previously known to ENGINEER in the public domain, as Client expressly designates in writing to be "Confidential." The provisions of this paragraph shall not apply to information in whatever form which (i) is published or comes into the public domain through no fault of ENGINEER, (ii) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (iii) is required to be disclosed by law on order of a court, administrative agency or other authority with proper jurisdiction.

Section 11. Independent Contractor. ENGINEER's relationship with the Client under this Agreement shall be that of independent contractor. The employees, methods, equipment,

and facilities used by ENGINEER shall at all times be under its exclusive direction and control, and the Client shall not exercise control over ENGINEER except insofar as may be necessary to ensure performance and compliance with this Agreement.

Section 12. Insurance. ENGINEER agrees to purchase and maintain at its own expense the following insurance in amounts not less than specified herein:

| <u>TYPE OF INSURANCE</u>         | <u>COVERAGE AMOUNTS</u>                     |
|----------------------------------|---|
| Worker's Compensation Insurance  | statutory                                   |
| Employer Liability Insurance     | \$1,000,000.00                              |
| General Liability Insurance      | \$1,000,000.00 per occurrence/per aggregate |
| Automobile Liability Insurance   | \$1,000,000.00 per occurrence/per aggregate |
| Professional Liability Insurance | \$1,000,000.00 per occurrence/per aggregate |

Certificates of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, ENGINEER agrees to reimburse the Client for any damages sustained by the client which are covered by ENGINEER's insurance to the extent of the limitations and exclusions contained within said insurance policies.

Client agrees to purchase and maintain at its own expense, general liability insurance in an amount necessary to provide coverage for sums up to the limit of Client's liability under the Texas Tort Claims Act.

Section 13. Indemnification. ENGINEER shall defend, indemnify, and hold the Client harmless from and against any claim asserted by any person or entity (other than an officer, director, employee or agent of Client) arising out of (i) ENGINEER's negligence or (ii) ENGINEER's breach of any obligation or responsibility imposed on it by the provisions of this Agreement, subject to the limitations and exclusions contained herein in Sections 12.

Section 14. Provided ENGINEER has been paid for its services, Client shall have the right to use the documents, photographs, drawings and specifications resulting from ENGINEER'S services. Reuse of any such materials by Client on any other project without the written authorization of ENGINEER shall be at Client's sole risk. ENGINEER shall have the right to retain copies of all such information and materials.

Section 15. Disputes. If a dispute arises relating to the performance of the Services covered by this Agreement, and legal or other costs are incurred, the prevailing party shall be entitled to recover all reasonable costs incurred in the defense of the claim, court costs, attorney's fees, and other claim-related expenses.

Section 16. Termination. This Agreement may be terminated by either party upon thirty (30) days written notice. In the event of termination, ENGINEER shall be paid for services performed prior to the termination notice date plus reasonable termination expenses, including the cost of completing analyses, records, and reports necessary to document job status at the time of termination.

Section 17. No Waiver. The failure of a party to enforce strictly any provision of this

Agreement shall not be deemed to act as a waiver of any provision, including the provision not so enforced.

Section 18. Choice of Law. This Agreement is deemed to be made under and shall be construed according to the laws of the State of Texas. Venue for any litigation arising out of this Agreement shall be in the District Court of Bowie County, Texas.

Section 19. Successors and Assignments. The Client and ENGINEER each binds itself and its successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; provided, however, neither party may assign this agreement or its duties and obligations hereunder without the prior written consent of the other party.

Section 20. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Section 21. Entire Agreement. This Agreement, including work orders authorized hereunder, constitutes the entire agreement between the parties hereto and it supersedes all prior or contemporaneous agreements, whether oral or written, with respect to the subject matter hereof. In case of conflict or inconsistency between this Agreement and any other contract documents, this Agreement shall control. No agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound. This Agreement is effective as of the date referenced above.

Section 22. Limitation of Liability. Notwithstanding any other clause in this Agreement, the total aggregate liability of the ENGINEER to the Client for any claims, losses, costs or damages arising out of or in connection with the ENGINEER'S, performance of the Agreement, whether under the law of contract, tort (including negligence), statute or otherwise, shall be limited to the extent permissible by law to five times the total compensation received by the ENGINEER, or the limits of the relevant insurance policies pursuant to this Agreement, whichever is greater.

The limits of liability in this clause do not apply to any liability of the ENGINEER, arising from claims made by any third party for personal injury, death or damage to any property."


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in two counterparts (each of which is an original) by their duly authorized representatives as of the date shown below.

TEXAMERICAS CENTER

By: 

Title: Executive Director/CEO

Date: 3/24/20

By: 

Title: Principal

Date: 3/18/2020



**WORK ORDER NUMBER 2020-1**

**PROJECT NAME: FY 2020 PROFESSIONAL WETLAND DELINEATION & MITIGATION SERVICES**

**SERVICES: CONSULTANT SERVICES**

**LOCATION: TEXAMERICAS CENTER**

**WORK ORDER DESCRIPTION**

This Work Order Number 2020-1, approved and signed this 24<sup>th</sup> day of March, 2020, supplements and is an attachment to the Professional Services Agreement effective the 24th day of March, 2020 between TexAmericas Center (Client) and Cardno, Inc. (Consultant) to provide authorization the CONSULTANT to provide the services described herein associated with the FY 2020 PROFESSIONAL WETLAND DELINEATION & MITIGATION SERVICES Project (Project) in Bowie County, Texas.

**SCOPE**

The Scope of Services under this Work Order Number 2020-1 is that generally described as follows:

- A. Provide professional wetland delineation services support as needed to support the goals and mission of the Client. See Attached Proposal & Exhibit.

**TERMS AND CONDITIONS**


- A. Client shall pay, and CONSULTANT agrees to accept as full compensation for the services to be performed under this Contract, payment as outlined herein. All work performed using this proposal are subject to revision or adjustment only if mutually agreed to in writing between the parties; subject, however to the limitations and requirements set forth in subparagraph D below.

- B. In the event that services requested by Client exceed the statements, provisions and assumptions as described herein, CONSULTANT shall provide additional Work Order requests to Client in a timely fashion.
- C. Invoices shall be submitted to Client on a per contract basis for the services rendered for the contract work in accordance with the Attached Proposal & Exhibit. Client shall remit payment for such invoiced amounts within 30 days of receipt of the invoice.
- D. Compensation for services rendered in accomplishment of wetland delineation services shall be made to the CONSULTANT on a time and materials basis. The invoice will contain a performance report that contains: 1) narrative description of significant task accomplishments during the invoice period; and 2) significant tasks anticipated to occur during the invoicing period. The maximum compensation amount which shall be rendered to the CONSULTANT for such basic engineering services under the provisions of Attached Proposal & Exhibit and as defined in this work order shall not exceed \$44,200.00 without prior written authorization by Client.


**WORK ORDER EXECUTION**

Except as modified or supplemented herein, all requirements of Professional Services Agreement effective the 24th day of March 2020, between CLIENT and CONSULTANT remain in full force and effect.

**TEXAMERICAS CENTER**

By:   
Name: Scott Norton  
Title: Executive Director/CEO  
Date: 3/24/20

**CARDNO, INC.**

By:   
Name: Chad Martin, PWS, CWB  
Title: Principal/Project Director  
Date: 3/18/2020





March 17, 2020

Jeff Whitten, P.E.  
Executive Vice President/Chief Operations Officer  
107 Chapel Lane  
New Boston, TX 75570

Cardno Inc.

76 San Marcos Street, Austin  
Texas 78702

Phone 512 745 8129  
Toll-free 800 368 7511

**Subject: FY 2020 PROFESSIONAL WETLAND DELINEATION & MITIGATION SERVICES**

Dear Mr. Whitten:

Cardno is pleased to submit our proposal in two phases. Phase 1: Complete a wetland delineation and report on approximately 1,018 acres within the TexAmericas complex, and 2: submit an Approved Jurisdictional Determination (AJD) to the Tulsa USACE. This proposal is based on scoping information provided via email on March 16, 2020 between Mr. Jeff Whitten and Chad Martin. A complete report and digital mapping will be provided to TexAmericas that will describe the results of the wetland delineation.

[www.cardno.com](http://www.cardno.com)

## Scope of Work

### ***A. Preliminary Waters of the United States Field Survey***

After completion of a desktop evaluation of the Subject Property including a review of historical and current topographic maps, aerial imagery, wetland inventory maps, flood maps, existing client site survey maps and reports, and soil survey data, Cardno will focus on identifying certain signatures and contours suggestive of potential Waters of the United States (US). The evaluation will also aid in establishing the presence or absence of a significant nexus used to determine the jurisdictional nature of identified features. Sources used to complete the evaluation will include:

- US Geological Survey: 7.5-minute topographic quadrangle maps;
- Color infrared and natural color digital aerial images;
- US Fish and Wildlife Service: National Wetland Inventory Maps;
- Federal Emergency Management Agency: Flood Insurance Rate Maps; and
- US Department of Agriculture, Natural Resource Conservation Service: Soil Survey for Bowie County.

### ***Delineation***

The purpose of the jurisdictional delineation is to determine the extent of all Waters of the US, including wetlands and streams, and to determine their jurisdictional status under Section 404 of the Clean Water Act (CWA). Non-compliance with Section 404 of the CWA is subject to federal penalties and enforced by USACE. The jurisdictional delineation will be conducted in accordance with the 1987 Manual and USACE Regulatory Guidance Letter 05-05. Additional supplemental sources will include the Atlantic and Gulf Coastal Plain Regional Supplement to the 1987 Manual. Cardno proposes to delineate and classify all stream and wetland features within the Subject Property.

All field data will be collected using sub-meter real-time differentially corrected global positioning system to comply with the current USACE guidance document SAW Survey Standards, May 2017. Mapped wetlands data will also be provided in KMZ and Shapefile format. Cardno assumes one round of edits during the Draft report review.

**B. AJD Submittal and Field Visit**

Cardno will complete and submit the AJD form to the Tulsa District USACE after review and concurrence by TexAmericas. Cardno has included time and expense for a one-day site visit with two Cardno staff and the USACE, if required to complete the AJD.

**Schedule**

Cardno is prepared to initiate the scope of services upon receipt of notice to proceed from TexAmericas. Assuming receipt of a notice to proceed, and access to the property is granted, Cardno will complete the preliminary research and studies and jurisdictional delineation within three to four weeks. Field work will be completed by four wetland biologist over a one-week period of time.

**Estimated Cost**

Cardno proposes to perform this work utilizing our standard rates for a not to exceed amount of **\$44,200**. Our estimate for this project can be seen in the breakdown below. All prices offered shall remain firm for sixty (60) calendar days from the date of this proposal.

| Description                       | Estimated Costs |
|-----------------------------------|-----------------|
| A. Wetland Delineation and Report | \$36,000        |
| B. AJD and Site Visit with USACE  | \$8,200         |
| <b>Total Estimated Fee</b>        | <b>\$44,200</b> |

Cardno looks forward to working with you on this very important project. We are confident that our services will be a great benefit to you and keep your project on schedule and on budget. If you find this proposal acceptable, please sign and date below and return to me by email. Your signature below will serve as written acceptance of the proposal. If you require additional information, please feel free to contact me at any time.

Sincerely,



Chad Martin, PWS, CWB  
Principal  
for Cardno  
Direct Line 713.203.9161  
Email: [chad.martin@cardno.com](mailto:chad.martin@cardno.com)

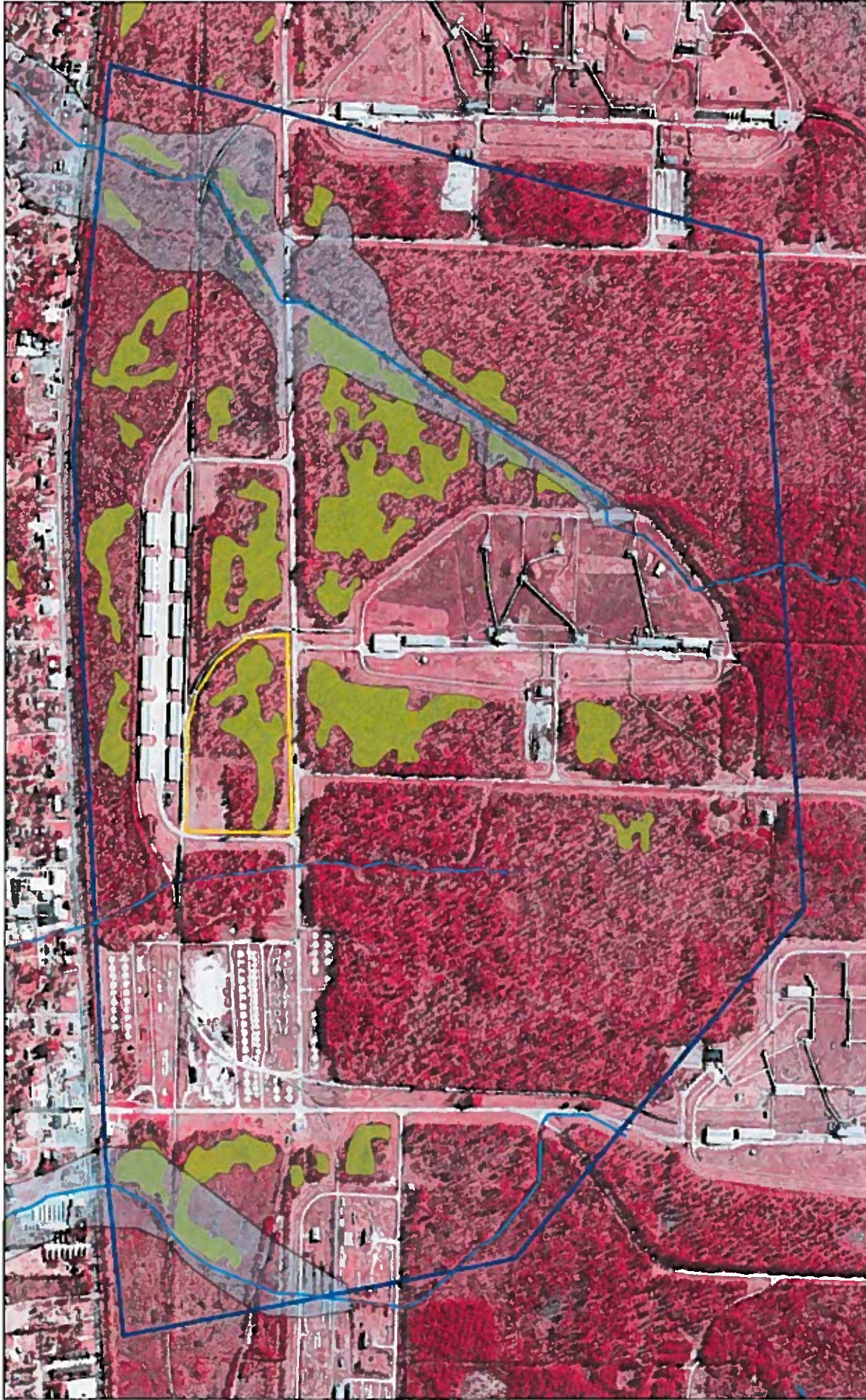
Accepted on: Month 03 Day 24 Year 20

Company Tex Americas Center

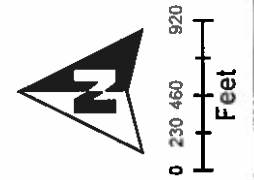
Print Name Scott Norton

Signature [Handwritten Signature]

Title Executive Director/CEO



- Legend**
- Wetland PH 1
  - Duke West
  - NHD Stream Lines
  - 100-Year Floodplain
  - NWI Wetlands



TAC Wetland Delineation

CIR Imagery

|      |            |            |            |           |   |
|------|------------|------------|------------|-----------|---|
| Date | March 2020 | Project No | XXXXXXXXXX | Figure No | 1 |
|------|------------|------------|------------|-----------|---|