

March 18, 2025

Pat Burns  
Lync Development  
2650 Washington Blvd, Suite 202  
Ogden, UT 84401

**SUBJECT: Promontory Lift Station Structural Redesign**

Dear Pat:

Thank you for reaching out to redesign the Promontory Sewer Lift Station in Ogden. As you know, the project was originally designed to be shallower than your request per the development master plan. To accommodate your development and increase the service area of the station, Horrocks will redesign the station to an additional 4' of depth to 4199 ft (NAVD88). This letter documents our project scope, schedule, and fee for the redesign.

#### **SCOPE**

The project will create a second design set that will be used for construction. The set will follow the original design requirements of Central Weber Sewer District, the Utah State Division of Water Quality, and Blackpine development with the addition the new invert of 4199 ft. Major scope items include:

- Creating a new structural model with the increased depth.
- Revisions to the drawings with any changes required from the model results.
- Resubmission to the Utah Division of Water Quality.

#### *Exclusions*

- The design does not include revisions from Lync Development group outside of the increased depth.
- The design does not guarantee cost effectiveness of the project.

#### *Deliverables*

- Revised construction plans.

#### **SCHEDULE**

The additional scope will be completed by 01 April 2025. Horrocks cannot guarantee timelines for third party approvals and permits.

#### **FEE**

The scope will require a lump sum fee of \$35,000 to complete. Payment is subject to the terms attached.

Sincerely,



Joshua Prettyman, PE

Water Team Lead, Horrocks

P: 801-592-3225 | E: [joshua.prettyman@horrocks.com](mailto:joshua.prettyman@horrocks.com)



Mark Chandler

18 March 2025

Mark Chandler

Date

Pat Burns

03/26/25

Date

## TERMS AND CONDITIONS

WHEREAS the CLIENT recognizes HORROCKS as having the necessary ability and experience to perform the services for the PROJECT and that it is properly qualified and licensed for this work, if required, in the state in which the PROJECT is located;

NOW, THEREFORE, CLIENT and HORROCKS agree as follows:

### SECTION 1 - PROFESSIONAL SERVICES

SCOPE OF SERVICES. It is hereby understood and agreed that HORROCKS will provide services to CLIENT in accordance with the Attachment, Scope of Services.

ADDITIONAL SERVICES. Engineering services or items which are not specifically listed within the Scope of Services as set forth in this AGREEMENT may be provided by HORROCKS under an extension of this AGREEMENT or under separate agreement with CLIENT. ADDITIONAL SERVICES and compensation must be approved by both CLIENT and HORROCKS in writing prior to work being performed.

### SECTION 2 - PAYMENT TO HORROCKS

COMPENSATION. For all services and materials pertinent hereto, HORROCKS shall bill CLIENT monthly, at the specific billing rates for each staff type indicated on the projected employee hours and costs schedule. Rates are updated annually.

AN INITIAL PAYMENT RETAINER in the amount specified in the HORROCKS Proposal shall be paid upon execution of this agreement and will be credited to the final invoice(s).

PAYMENT TERMS. CLIENT agrees to make payments within thirty (30) days of HORROCKS' invoices. If CLIENT disputes any portion of an invoice, CLIENT will notify HORROCKS of such disputed items within ten (10) days of invoice date. CLIENT recognizes that late payment of invoices results in extra expenses for HORROCKS. HORROCKS retains the right to assess CLIENT interest at the rate of one and one-half percent (1.5%) per month (18% per annum) or the maximum legal rate of interest allowable, on invoices which are not paid within forty-five (45) days from the date of invoice. HORROCKS also reserves the right, after seven (7) days prior written notice, to suspend performance of its services under this AGREEMENT until all PAST DUE amounts have been paid in full. HORROCKS will file Lien on CLIENT's property if all payments are not completed in full within 89 days after completion of services.

### SECTION 3 - MISCELLANEOUS PROVISIONS

STANDARD OF PERFORMANCE. HORROCKS agrees the services to be provided by it under this AGREEMENT will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession,

providing the same or similar professional service, in the same or similar locality, at the same or similar time, and under the same or similar circumstances.

CLIENT-PROVIDED SERVICES AND INFORMATION. CLIENT shall furnish HORROCKS available studies, reports, and other data pertinent to HORROCKS' services; obtain or authorize HORROCKS to obtain or provide additional reports and data as required; furnish to HORROCKS services of others as required for the performance of HORROCKS' services hereunder, and HORROCKS shall be entitled to use and rely upon all information and services provided by CLIENT or others in performing HORROCKS' services under this AGREEMENT.

CLIENT-PROVIDED ACCESS. CLIENT shall arrange for access to and make all provisions for HORROCKS to enter upon public and/or private property as required for HORROCKS to perform services under this AGREEMENT.

### OWNERSHIP OF WORK PRODUCT/DOCUMENTS.

All documents prepared by or on behalf of HORROCKS in connection with any project performed under this AGREEMENT are to be considered instruments of service for the execution of the Project. HORROCKS shall retain any and all intellectual and property rights in these documents, whether or not the Project is completed. Payment to HORROCKS for the Services rendered and pursuant to the payment terms under this AGREEMENT shall be a condition precedent to CLIENT's right to use any of the documentation prepared by HORROCKS. Such documents may not be used for any other purpose without the prior written agreement of HORROCKS. However, CLIENT shall have a permanent non-exclusive, royalty-free license to use any concept, product or process which is patentable or capable of trademark, produced by or resulting from the Services rendered by HORROCKS in connection with the Project, for the life of said Project.

In the event any of HORROCKS' documents are subsequently used, reused and/or modified in any respect without HORROCKS' involvement and oversight, CLIENT hereby agrees to release, indemnify, and hold HORROCKS, its officers, employees, consultants and agents harmless from and against any claims or damages arising from the reuse or modification of said documents.

Further, HORROCKS cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic format ("Electronic Files").

CLIENT hereby agrees to release, indemnify and hold HORROCKS, its officers, employees, consultants and agents harmless from and against any claims or damages arising from the use of said Electronic Files. Electronic files will remain the property of HORROCKS, may not to be used for any purpose other than that for which they were transmitted, and are not to be retransmitted to any third party without HORROCKS' prior written consent.

**NON-SOLICITATION:** Neither PARTY shall knowingly solicit, recruit, hire or otherwise employ or retain the employees of the other working under this AGREEMENT during the Term of this AGREEMENT and for one (1) year following the termination or expiration of this AGREEMENT without the prior written consent of the other PARTY.

However, notwithstanding the above, this Paragraph shall not restrict the right of either PARTY to solicit or recruit generally in the media, and shall not prohibit either PARTY from hiring, without prior written consent, the other PARTY'S employee who answers any advertisement or who otherwise voluntarily applies for hire without having been personally solicited by the hiring PARTY.

For a breach of NON-SOLICITATION, an amount equal to twice the base annual salary of the recruited employee at the time of their departure shall be paid by the hiring PARTY to the other PARTY. This compensation shall be based on the damages suffered by the other PARTY as a result of the breach, with the understanding that the amount may be subject to negotiation.

#### SECTION 4 - LEGAL RELATIONS

**INDEPENDENT CONTRACTOR.** HORROCKS and CLIENT agree that HORROCKS is an independent contractor. Nothing contained in this AGREEMENT shall be construed as creating any agency, partnership, joint venture, other form of joint enterprise, employment or fiduciary relationship between the PARTIES. HORROCKS shall be free to render consulting services to others during the term of this AGREEMENT, so long as such activities do not interfere with or diminish HORROCKS' ability to fulfill the obligations established herein to CLIENT.

**LIMITATION OF RIGHTS.** The services to be performed by HORROCKS are intended solely for the benefit of CLIENT. Nothing contained herein shall confer any rights upon or create any duties toward any person or persons not a party to this AGREEMENT including, but not limited to, any contractor, subcontractor, supplier, or the agents, officers, employees, insurers, or sureties of any of them.

**SUCCESSORS AND ASSIGNS.** CLIENT and  
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HORROCKS, respectively, bind themselves, their partners, successors, and assigns to the covenants of this AGREEMENT. Neither CLIENT nor HORROCKS will assign, sublet, or transfer any interest in this AGREEMENT, or assign any cause of action for alleged breach of this AGREEMENT, without the written consent of the other.

**DELAYS.** Neither PARTY is responsible to the other for delay in performance caused by events beyond their control. In the event HORROCKS' services are suspended, delayed, or interrupted for the convenience of CLIENT or delays occur beyond the control of HORROCKS, equitable adjustment(s) in HORROCKS' time of performance, compensation, and/or cost of Subconsultant(s) shall be made.

**DISPUTE RESOLUTION.** In the event of a dispute arising out of or relating to this AGREEMENT or the services to be rendered hereunder, with the exception of non-payment issues, CLIENT and HORROCKS agree to attempt to resolve such disputes in the following manner: First, the PARTIES agree to attempt direct negotiations between the appropriate representatives of each PARTY. Second, if such negotiations are not fully successful, the PARTIES agree to attempt to resolve any remaining disputes by formal nonbinding mediation conducted by the American Arbitration Association or by such other person or organization as the PARTIES may agree upon. Either PARTY may demand mediation by serving a written notice stating the essential nature of the dispute and demanding that the mediation proceed within sixty (60) days of service of notice. Third, if the dispute or issues remain unresolved after the above steps, the PARTIES agree to resolve the dispute by submitting the matter to civil litigation. No action or suit may be commenced unless (1) the mediation does not occur within ninety (90) days after service of notice, (2) the mediation occurs within ninety (90) days after service of notice but does not resolve the dispute, or (3) a statute of limitation would elapse if suit was not filed prior to ninety (90) days after service of notice.

**LIMITED LIABILITY COMPANY PROTECTION.** It is intended by the PARTIES to this Agreement that HORROCKS' services in connection with the Project shall not subject HORROCKS' individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, CLIENT agrees that as CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against HORROCKS LLC, a Delaware Limited Liability Company, and not against any of HORROCKS' individual employees, officers or directors.

#### SECTION 5 CONTRACTOR'S

CONTRACTOR'S METHODS, PRICES. HORROCKS has no control over the cost of labor, materials, equipment, or other services furnished by others, or over Contractor's methods of determining prices, or other competitive bidding or market conditions, practices, or omissions on the site. Any cost estimates provided by HORROCKS will be made, based on its experience and judgment. HORROCKS cannot and does not guarantee that proposals, bids, or actual PROJECT construction costs will not vary from cost estimates prepared by HORROCKS.

CONTRACTOR'S INDEMNIFICATION. CLIENT agrees that its contract with Contractor shall expressly state that Contractor shall indemnify and hold harmless CLIENT and HORROCKS from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from Contractor's performance of work including injury to any worker on the job site, except for negligence, errors or omissions on the part of CLIENT or HORROCKS. Further, CLIENT's contract with Contractor shall require that both CLIENT and HORROCKS be named as additional insureds on Contractor's General Liability and Builders All Risk insurance policies, and that such policies provide that the coverage is primary and noncontributory coverage with respect to any other insurance available to CLIENT and HORROCKS.

CONTRACTOR'S SAFETY METHODS. HORROCKS shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by contractors or the safety precautions and programs incident to the work of contractors and shall not be responsible for Contractor's failure to carry out work in accordance with the Contract Documents.

#### SECTION 6 LIMITATION OF LIABILITY

LIMITATION OF LIABILITIES: Notwithstanding any other provision in this AGREEMENT, the total liability of HORROCKS and HORROCKS' officers, directors, members, partners, agents, employees, and consultants to CLIENT for any and all claims, losses, expenses, costs, and/or damages arising out of, or resulting from, or in any way related to HORROCKS' services or this AGREEMENT, from any cause or causes whatsoever, including but not limited to negligence, professional errors or omissions, strict liability, breach of contract, indemnity, and breach of warranty, express or implied, shall not exceed the total amount of \$25,000 or the total compensation received by HORROCKS under this AGREEMENT, whichever is greater (the "Limitation Amount"). Further, in no event shall the Limitation Amount exceed the amount of insurance proceeds actually available to HORROCKS for the claim at issue at the time of settlement or final judgment. No claim may be brought against HORROCKS in contract, tort, or under any other theory more than two (2) years after

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the cause of action arose. Any claim, suit, demand or action brought under this AGREEMENT shall be directed and/or asserted only against HORROCKS and not against any of HORROCKS' employees, shareholders, officers or directors. HORROCKS' liability with respect to any claims arising out of this AGREEMENT shall be limited as provided herein to direct damages arising out of the performance of the Services.

CLIENT agrees that any and all limitations of HORROCKS' liability, waivers of damages by CLIENT to HORROCKS and indemnifications by CLIENT to HORROCKS shall include and extend to those individuals and entities HORROCKS retains for performance of the services under this AGREEMENT, including but not limited to HORROCKS' officers, principals and employees and their heirs and assigns, as well as HORROCKS' subconsultants and their officers, employees, heirs and assigns.

CLIENT specifically agrees that it has had the opportunity to negotiate this Limitation of Liability clause and to accept or reject its inclusion herein.

INSURANCE. HORROCKS maintains, at its own expense, workers compensation, commercial general liability, automobile liability, and professional liability insurance policies with limits at or above that which is reasonably required in the industry and will, upon request, furnish certificates of insurance to CLIENT.

INDEMNIFICATION. HORROCKS agrees, to the extent allowed by law, to indemnify and hold harmless CLIENT, its officers, directors and employees from and against all liability for damages to the extent the damages were caused by HORROCKS' negligent acts, errors or omissions in the performance of professional services under this AGREEMENT.

CLIENT agrees, to the extent allowed by law, to indemnify and hold harmless HORROCKS, its officers, directors, employees, and subconsultants from and against all liability for damages to the extent the damages were caused by CLIENT's negligent acts, errors or omissions.

Notwithstanding the foregoing agreement to indemnify and hold harmless, the PARTIES expressly agree that HORROCKS has no duty to defend CLIENT from and against any claim, cause of action or proceeding of any kind. Neither PARTY shall be obligated to indemnify the other PARTY in any manner whatsoever for the other PARTY's negligence.

HAZARDOUS SUBSTANCE INDEMNIFICATION. With respect to claims, damages, losses, and expenses which are related to hazardous waste, pollutants, contaminants, or asbestos on or about project worksite, CLIENT shall, to the extent permitted by law and to the extent HORROCKS is not the cause

of such waste, pollutants, contaminants, or asbestos, indemnify and hold harmless HORROCKS and its employees, subconsultants, or agents from and against all such claims against HORROCKS related thereto.

CONSEQUENTIAL DAMAGES. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither CLIENT nor HORROCKS, their respective officers, directors, principals, employees, contractors, or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the PROJECT or to this AGREEMENT. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, increased finance costs, loan fees or interest on loans, and any other consequential damages that either PARTY may have incurred from any cause of action including without limitation negligence, strict liability, breach of contract and breach of strict or implied warranty. Both CLIENT and HORROCKS shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the PROJECT.

#### SECTION 7 - TERMINATION OF AGREEMENT

TERMINATION FOR CAUSE. This AGREEMENT may be terminated in whole or in part by either PARTY if the other PARTY substantially fails to fulfill its obligations under this AGREEMENT, provided that such failure is not due to any fault of the terminating PARTY; and provided that no such termination may be effected unless the failing PARTY is given (1) not less than thirty (30) days written notice (delivered by certified mail, return receipt required) of intent to terminate, and (2) an opportunity for consultation with the terminating PARTY prior to termination.

REMEDIES FOR TERMINATION. If this AGREEMENT is terminated in whole or in part by CLIENT for reasons of default by HORROCKS, a negotiated adjustment in the price provided for in this AGREEMENT shall be made, however, no amount shall be allowed for anticipated profit or unperformed services. If this AGREEMENT is terminated in whole or in part by HORROCKS for reasons of default by CLIENT, the negotiated adjustment shall include a reasonable profit on that portion of the work performed. The equitable adjustment for any termination shall provide payment to HORROCKS for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by HORROCKS relating to obligations and commitments as a result of entering into this AGREEMENT.

TERM. This AGREEMENT shall commence on the date in the introductory clause, and HORROCKS is authorized to commence performance of the services for the PROJECT as of that date, unless otherwise noted. This AGREEMENT terminates on: 1) the date set forth in Attachment, SCOPE of SERVICES or 2) six (6) months from date in SCOPE of SERVICES, unless terminated earlier pursuant to the terms and conditions of this AGREEMENT. HORROCKS agrees to submit final invoice in a timely manner.

#### SECTION 8 - ENTIRE AGREEMENT

ENTIRE AGREEMENT. This Engineering Services AGREEMENT shall remain in effect throughout the duration of the PROJECT. This AGREEMENT, including attachments incorporated herein by reference, represents the entire AGREEMENT and understanding between the parties, and any negotiations, proposals, or oral agreements are intended to be integrated herein and to be superseded by this written AGREEMENT. Any supplement or amendment to this AGREEMENT, to be effective, shall be in writing and signed by CLIENT and HORROCKS.

SEVERABILITY. If any provision of this AGREEMENT is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the PARTIES. One or more waivers by either PARTY of any provision, term, or condition shall not be construed by the other PARTY as a waiver of any subsequent breach of the same provision, term, or condition.

SURVIVAL. All limitations of liability, indemnifications, warranties, and representations contained in this AGREEMENT shall survive the completion or termination of this AGREEMENT and shall remain in full force and effect.

EXECUTION OF DOCUMENTS. HORROCKS shall not be required to execute any documents subsequent to the signing of this AGREEMENT that in any way might, in the sole judgment of HORROCKS, increase HORROCKS' risk or the availability or cost of its professional or general liability insurance.

#### SECTION 9 - GOVERNING LAW

This AGREEMENT is to be governed by and construed in accordance with the laws of the State of Utah.