

STATE OF TEXAS            §  
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COUNTY OF FORT BEND    §

**SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES  
FOR REPAIR OF WILLOW FORK OF BUFFALO BAYOU AND CANE ISLAND BRANCH  
SOQ 17-086**

**THIS SECOND AMENDMENT**, is made and entered into by and between the Fort Bend County Drainage District (hereinafter “District”), a body corporate and politic under the laws of the State of Texas, and M&E Consultants, LLC (hereinafter “Consultant”), a company authorized to conduct business in the State of Texas.

WHEREAS, the parties executed and accepted that certain Agreement for Professional Engineering Services for Repair of Willow Fork of Buffalo Bayou and Cane Island on November 28, 2017, and as amended on August 28, 2018, pursuant to SOQ 17-086, (hereinafter “Agreement”); and

WHEREAS, the parties desire to amend the Agreement to increase the Time of Performance under the Agreement.

**NOW, THEREFORE**, the parties do mutually agree as follows:

1. The Time of Performance under the Agreement shall hereby be extended to expire one thousand four hundred and sixty (1460) calendar days from the date of Consultant’s receipt of the initial Notice to Proceed.
  
2. Additional Federal Clauses. Contractor understands and acknowledges that this Agreement may be totally or partially funded with federal and or state funds from the National Resource Conservation Service (NRCS) and the United States Department of Agriculture (USDA). As a condition of receiving these funds, Contractor represents that it is and will remain in compliance with all federal and or state terms as stated below. These terms flow down to all third party contractors and their subcontracts at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. The Contractor shall require that these clauses shall be included in each covered transaction at any tier.

(1) Access to Records

The Contractor shall furnish and cause each of its subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the County, USDA or its agent, or other authorized federal officials for

purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein. Contractor agrees to retain all records dealing with the award and administration of contract(s) for three (3) years from the date of the sponsor's submission of the final Request for Reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the three (3) year period, the records are to be retained until the litigation is resolved or the end of the three (3) year period, whichever is longer. Contractor Make such records available to the Comptroller General of the United States or his or her duly authorized representative.

(2) Contract Work Hours and Safety

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5.

- i. Standard Work Week and Overtime Requirements. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
- ii. Violations. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
- iii. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federally-assisted contract

subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (2) of this section.

- iv. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

### (3) Equal Employment Opportunity

The Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

### (4) Privacy Act

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance. Contractor shall also comply with privacy of personal information

relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).

(5) Record Retention

The Contractor shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years from receipt of final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

(6) Contracting with Small, Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms.

Contractor will take all necessary, affirmative steps to assure that qualified small and minority businesses, women's business enterprises, and labor area surplus firms are used when possible by:

- a) Placing small and minority businesses and women's business enterprises on solicitation lists;
- b) Assuring that it solicits small and minority businesses and women's business enterprises whenever they are potential sources;
- c) Dividing total requirements, *when economically feasible*, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- d) Establishing delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses and women's business enterprises;
- e) Utilizing the assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
- f) Contractor must require subcontractors to take the five affirmative steps described in a-e above.

(7) Environmental Conditions

Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the

National Environmental Policy Act of 1969 (P.L. 91- 190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (a) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

(8) Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements

(a) *Definitions.* As used in this clause -

*Internal confidentiality agreement or statement* means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency.

*Subcontract* means any contract as defined in subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

*Subcontractor* means any supplier, distributor, vendor, or firm (including a consultant) that furnishes supplies or services to or for a prime contractor or another subcontractor.

(b) The Contractor shall not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (*e.g.*, agency Office of the Inspector General).

(c) The Contractor shall notify current employees and subcontractors that prohibitions and restrictions of any preexisting internal confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

(d) The prohibition in paragraph (b) of this clause does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form

4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113-235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts under such contracts.

(9) Additional Confidentiality Requirements

Activities performed under this Agreement may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term "confidential information" means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of NRCS. b. The Contractor's personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The Contractor's personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171 ). c. The Contractor agrees to comply with NRCS guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food Conservation, Energy Act of 2008 (PL 110-246), 7U.S.C. 8791.

(10) Termination for Cause and Termination for Convenience

Contractor understands that all contracts in excess of \$10,000, including subcontracts, must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(11) Compliance with All Federal Laws

Contractor will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

**3. Human Trafficking.** BY ACCEPTANCE OF CONTRACT, CONTRACTOR ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

Except as provided herein, all terms and conditions of the Agreement shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the final party.

FORT BEND COUNTY DRAINAGE DISTRICT

M&E CONSULTANTS, LLC

\_\_\_\_\_  
KP George, County Judge

*Thomas P. Beach*

\_\_\_\_\_  
Authorized Agent - Signature

\_\_\_\_\_  
Date

*Thomas P. Beach*

\_\_\_\_\_  
Authorized Agent - Printed Name

ATTEST:

*Partner*

\_\_\_\_\_  
Title

\_\_\_\_\_  
Laura Richard, County Clerk

*9-14-2020*

\_\_\_\_\_  
Date

REVIEWED BY:

\_\_\_\_\_  
Mark Vogler, Chief Engineer

APPROVED AS TO LEGAL FORM:

*Huma N. Ahmed*

\_\_\_\_\_  
Huma Ahmed, Assistant County Attorney

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Second Amendment to Agreement for Professional Engineering Services

SOQ 17-086

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**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ \_\_\_\_\_ to accomplish and pay the obligation of Fort Bend County under this contract.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

# EXHIBIT A



**M&E Consultants**  
Soil & Water Engineering Solutions

August 24, 2020

Adam Wright  
Project Coordinator  
Fort Bend County Drainage District  
P.O. Box 1028  
Rosenberg, TX 77471  
Fort Bend County Drainage District  
301 Jackson, Suite 210  
Richmond TX 77469

Dear Adam:

Please find the amendment 2 request to the existing contract and its attachments for Geotechnical Investigation, Engineering Surveys, Design, Construction Quality Assurance, & Engineering Construction Support, for your consideration. This amendment adds to our existing contracts performance time, the work to repair damages to Buffalo Bayou Willow Fork and Cane Island Branch, SOQ 17-086.

The performance time for M&E's A&E services is estimated to increase the current performance time by 1.3 years. Please check with NRCS to determine if this time increase can be adapted to fit within the NRCS EWP program guidelines. This additional time is estimated based on construction contract performance time and weather delays estimates.

We look forward to continuing to work with Fort Bend County and the NRCS in performing this work. If you have any questions, please call our main office in Temple (254-983-9103) or Tom Beach at (254-760-7499).

Sincerely,

Thomas P. Beach, PE  
Partner/Construction Engineer

## **Amendment Request**

Pursuant to Section 6. Modifications and Waivers, the Agreement for Professional Engineering Services for Repair of Willow Fork of Buffalo Bayou and Cane Island Branch SOQ 17-086 shall be amended as follows:

### **AGREEMENT as AMENDED**

#### **Section 5. Time of Performance**

The time of performance of the Scope of Services by Consultant shall be changed to **one thousand four hundred sixty (1460)** calendar days thereafter.