

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR
FLAT BANK/STEEP BANK CHANNEL REPAIR PROJECT
FEMA PROJECT 11898
RFQ 21-070**

THIS AGREEMENT is made and entered into by and between 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.

WITNESSETH

WHEREAS, District desires that Consultant prepare plans and provide construction management of FEMA Project 11898 Flat Bank/Steep Bank Channel Repair in Fort Bend County, Texas, pursuant to RFQ 21-070, (hereinafter “Services”); and

WHEREAS, District has determined Consultant is the most highly qualified provider of the desired Services on the basis of demonstrated competence and qualifications, and County and Consultant have negotiated to reach a fair and reasonable amount of compensation for the provision of such Services, as required under Chapter 2254 of the Texas Government Code; and

WHEREAS, Consultant represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Consultant shall render Services to District as defined in relevant portions of Consultant’s response to RFQ21-070 and Price Proposal for Engineering Services attached hereto as Exhibit A and incorporated herein.

Section 2. Personnel

2.1 Consultant represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Consultant shall furnish and maintain, at its own

expense, adequate and sufficient personnel, in the opinion of District, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant who, in the opinion of District, is incompetent or by his conduct becomes detrimental to the project shall, upon request of District, immediately be removed from association with the project.

Section 3. Compensation and Payment

3.1 The Maximum Compensation for the performance of Services within the Proposal described in Exhibit A is an amount of two hundred fourteen thousand eight hundred sixty dollars and 10/100 (\$214,860.10). In no case shall the amount paid by District under this Agreement exceed the Maximum Compensation without written amendment executed by the parties.

3.2 All performance of the Scope of Services by Consultant including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by District.

3.3 District will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to District staff designated by the Chief Engineer, one (1) electronic (pdf) and/or one (1) original invoice showing the amounts due for services performed in a form acceptable to District. District shall review such invoices and approve them within thirty (30) calendar days with such modifications as are consistent with this Agreement and forward same to the Fort Bend County Auditor for processing. District shall pay each such approved invoice within thirty (30) calendar days. District reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that District shall have available the total maximum sum of two hundred fourteen thousand eight hundred sixty dollars and 10/100 (\$214,860.10), specifically allocated to fully discharge any and all liabilities District may incur.

4.2 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that District may become liable to pay to Consultant shall not under any conditions, circumstances, or interpretations thereof exceed two hundred fourteen thousand eight hundred sixty dollars and 10/100 (\$214,860.10).

Section 5. Time of Performance

The time for performance of the Scope of Services by Consultant shall begin with receipt of the Notice to Proceed from District and end no later December 31, 2023. Consultant shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the District.

Section 6. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

7.1 Termination for Convenience – District may terminate this Agreement at any time upon thirty (30) days written notice.

7.2 Termination for Default

7.2.1 District may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Consultant fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the District in writing;

7.2.1.2 If Consultant materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to District's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from District specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the District in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, District shall compensate Consultant in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to

District. Consultant's final invoice for said services will be presented to and paid by District in the same manner set forth in Section 3 above.

7.4 If District terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Consultant.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part of its work under this Agreement, shall become the property of District upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Consultant shall promptly furnish all such data and material to District on request. If the District modifies and/or uses the documents for any reason other than their intended use, without Consultant's authorization, the Consultant shall be released from any liability as a result of such action.

Section 9. Inspection of Books and Records

Consultant will permit District, or any duly authorized agent of District, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Services. District's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

10.1 Prior to commencement of the Services, Consultant shall furnish District with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to District. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by District. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability Insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

10.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.5 Professional Liability insurance may be on a Claims Made form with limits not less than \$1,000,000.

10.2 District and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Consultant shall contain a waiver of subrogation in favor of District and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

Section 11. Indemnity

11.1 CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS DISTRICT AGAINST LOSSES, LIABILITIES, CLAIMS, AND CAUSES OF ACTION, INCLUDING THE REIMBURSEMENT OF DISTRICT'S REASONABLE ATTORNEY'S FEES IN PROPORTION TO CONSULTANT'S LIABILITY, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, INTENTIONAL TORT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES.

11.2 Consultant shall timely report all such matters to District and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month; provide District with a written report on each such matter, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of District required by Consultant in the defense of each matter.

11.3 Consultant's duty to defend indemnify and hold District harmless shall not abate or end by reason of the expiration or termination of the Agreement unless otherwise agreed by District in writing. The provisions of this section shall survive the termination of the Agreement and shall remain in full force and effect with respect to all such matters no matter when they arise.

11.4 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Consultant, Consultant shall never-the-less fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of Consultant are not at issue in the matter.

11.5 Consultant's indemnification shall cover, and Consultant agrees to indemnify District, in the event District is found to have been negligent for having selected District to perform the work described in this request.

11.6 The provision by Consultant of insurance shall limit the liability of Consultant to District.

11.7 Consultant shall cause all trade contractors and any other contractor who may have a contract to perform construction or installation work in the area where work will be performed under this request, to agree to indemnify District and to hold it harmless from all claims for bodily injury and property damage that may arise from said Consultant's operations. Such provisions shall be in form satisfactory to District.

11.8 Loss Deduction Clause - District shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Consultant and/or trade contractor providing such insurance.

Section 12. Confidential and Proprietary Information

12.1 Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to District. Any and all information of any form obtained by Consultant or its employees or agents from District in the performance of this Agreement shall be deemed to be confidential information of District ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

12.2 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes

whatsoever other than the provision of Services to District hereunder, unless disclosure is required by law or court order, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise District immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with District in seeking injunctive or other equitable relief in the name of District or Consultant against any such person. Consultant agrees that, except as directed by District, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at District's request, Consultant will promptly turn over to District all documents, papers, and other matter in Consultant's possession which embody Confidential Information; provided however, that Consultant may retain one (1) copy of all work produced which incorporates Confidential Information for internal record-keeping purposes, subject to the terms of this Agreement.

12.3 Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to District that is inadequately compensable in damages. Accordingly, District may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of District and are reasonable in scope and content.

12.4 Consultant in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Consultant expressly acknowledges that District is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, District will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to District by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 13. Independent Consultant

13.1 In the performance of work or services hereunder, Consultant shall be deemed an independent Consultant, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Consultant or, where permitted, of its subcontractors.

13.2 Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of District and shall not be entitled to any of the privileges or benefits of District employment.

Section 14. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a “Notice”) pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

District:	Fort Bend Drainage District Attn: Chief Engineer 301 Jackson Street Richmond, Texas 77469
With a copy to:	Fort Bend County Attn: County Judge 401 Jackson Street Richmond, Texas 77469
Consultant:	M&E Consultants, LLC Post Office Box 9 Heidenheimer, Texas 76533

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. Compliance with Laws

Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker’s Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by District, Consultant shall furnish District with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Standard of Care

Consultant represents to District that Consultant shall perform the Services to be provided under this Agreement with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license. Further, Consultant shall perform the Services as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

Section 17. Assignment

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the District’s sovereign immunity.

Section 19. Successors and Assigns

District and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors,

executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of District. Under no circumstances whatsoever, shall Consultant release any material or information developed or received in the performance of the Services hereunder without the express written permission of District, except where required to do so by law.

Section 23. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 24. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

Section 25. Certain State Law Requirements for Contracts

25.1 Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, Consultant verifies that if Consultant employs ten (10) or more full-time employees and this Agreement has a value of \$100,000 or more, Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

25.2 Texas Government Code Section 2251.152 Acknowledgment: By signature below, Consultant represents pursuant to Section 2252.152 of the Texas Government Code, that Consultant is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

Section 26. Federal Funding Requirements – Consultant understands and acknowledges that this Agreement may be totally or partially funded with federal and/or state funds from the Federal Emergency Management Agency (FEMA). As a condition of receiving these funds, Consultant represents that it is and will remain in compliance with all federal and/or state terms as stated herein. The terms flow down to all third party contractors and their subcontractors at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. **Consultant shall require that these clauses shall be included in each covered transaction at any tier.**

26.1 Clean Air Act and Federal Water Pollution Control Act:

26.1.1 Clean Air Act: The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Consultant agrees to report each violation to the County and understands and agrees that the County, will in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

26.1.2 Federal Water Pollution Control Act: The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

26.2 Energy Policy and Conservation Act: Consultant agrees to comply with Energy Policy and Conservation Act (42 U.S.C. § 6201).

26.3 Debarment and Suspension:

26.3.1 The Consultant certifies that they are in compliance with the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180 which states that a contract award in any tier must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders Nos. 12549 (3 C F R part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No. 12549. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount).

26.3.2 This certification is a material representation of fact relied upon by the County. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to DHS and County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

26.3.3 Consultant agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

26.4 Byrd Anti-Lobbying Amendment: Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

26.5 Political Activities: Consultants are prohibited from using federal funds directly or indirectly for political purposes, including polling, lobbying or advocating for legislative programs or changes; campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties; and voter registration or get-out-the-vote campaigns. Generally, organizations or entities which receive federal funds by way of grants, contracts, or cooperative agreements do not lose their rights as organizations to use their own, private, non-federal resources for “political” activities because of or as a consequence of receiving such federal funds. These recipient organizations must thus use private or other non-federal money, receipts, contributions, or dues for their political activities, and may not charge off to or be reimbursed from federal contracts or grants for the costs of such activities.

26.6 Procurement of Recovered Materials: Consultant must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). (1) In the performance of this Agreement, the Consultant shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired: (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price. (2) Information about this requirement, along with the list of EPA designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

26.7 Access to Records:

26.7.1 The Consultant agrees to provide County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

26.7.2 The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

26.7.3 The Consultant agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

26.8 DHS Seal, Logo, and Flags: The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

26.9 Compliance with Federal Law, Regulations, and Executive Orders: The Consultant will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

26.10 No Obligation by Federal Government: The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Consultant, or any other party pertaining to any matter resulting from the contract.

26.11 Program Fraud and False or Fraudulent Statements or Related Acts: The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this Agreement.

26.12 Civil Rights and Non-Discrimination: During the performance of this Agreement, Consultant agrees as follows:

26.12.1 Nondiscrimination on the Basis of Race, Color, and National Origin: Consultant will comply with state and federal anti-discrimination laws including Title VI of The Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), FEMA's implementing regulations at 44 C.F.R. Part 7 (Nondiscrimination in Federally Assisted Programs), and the Department's implementing regulations at 6 C.F.R. Part 21 (Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance) which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

26.12.2 Nondiscrimination on the Basis of Sex: Consultant will comply with Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.), FEMA’s implementing regulations at 44 C.F.R. Part 19 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance), and the Department’s implementing regulations at 6 C.F.R. Part 15 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance) prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.

26.12.3 Nondiscrimination on the Basis of Disability: Consultant will comply with The Americans with Disability Act of 1990 (codified as amended at 42 U.S.C. §§ 12101-12213) prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Consultants must comply with the responsibilities under Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

26.12.4 Nondiscrimination on the Basis of Handicap: Consultant will comply with Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) and FEMA’s implementing regulations at 44 C.F.R. Part 16 (Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Emergency Management Agency) provide that no otherwise qualified handicapped individual in the United States will, solely by reason of handicap, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance.

26.12.5 Nondiscrimination on the Basis of Age: Consultant will comply with the Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.), and Department of Health and Human Services implementing regulations at 45 C.F.R. Part 90 (Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance) prohibit discrimination against individuals on the basis of age in any program or activity receiving Federal financial assistance.

26.12.6 Nondiscrimination on the Basis of Limited English Proficiency:

26.12.6.1 Consultant will comply with Title VI of the Civil Rights Act of 1964 prohibition against discrimination on the basis of national origin which requires that recipients and subrecipients of FEMA assistance take reasonable steps to provide meaningful access to persons with limited English proficiency.

26.12.6.2 Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, English proficiency, or disability. Consultant shall not, on the grounds of race, color,

creed, national origin, sex, age, English proficiency, or disability, exclude a person from participation in, deny him/her benefits, or subject him/her to discrimination. Consultant shall adhere to any Federal implementing regulations and other requirements that the Department and the FEMA have with respect to nondiscrimination.

26.13 Contracting with Small, Minority Firms, Women’s Business Enterprises and Labor Surplus Area Firms: Consultant will take all necessary affirmative steps to assure that qualified small, minority firms, women’s business enterprises, and labor surplus area firms are used when possible by:

26.13.1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

26.13.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

26.13.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

26.13.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

26.13.5 Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

26.13.6 Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections 26.13.1 through 26.13.5.

26.14 Environmental and Historic Preservation Protections: Consultant shall abide by all environmental and historic preservation mitigation measures identified by FEMA when performing the scope of work including: a. National Environmental Policy Act of 1969, Pub. L. No. 91-190 (1969) (codified as amended at 42 U.S.C. §§ 4321-4347); the National Historic Preservation Act, Endangered Species Act Endangered Species Act of 1973, Pub. L. No. 93-205 (1973) (codified as amended at 16 U.S.C. §§ 1531-1544); Clean Water Act, other laws, and various executive orders.

26.15 Seismic Safety: Consultant must use appropriate seismic design and construction standards and practices pursuant to the Earthquake Hazard Reduction Act of 1977, Pub. L. No. 93-205 (1973) (codified as amended at 16 U.S.C. §§ 1531-1544); Clean Water Act, other laws, and various executive orders.

26.16 Disaster Reservists: Consultant may not in the performance of this Agreement utilize employees who are also Disaster Reservists. Disaster Reservists are personnel authorized by the special hiring authority in the Stafford Act that are not full-time employees, but rather work on an on-call, intermittent basis to perform disaster response and recovery activities.

26.17 False Statements Act: Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this Agreement. The Consultant understands that in the event County becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received from FEMA or the Office of the Governor, the County is required to immediately notify OOG of said allegation or finding and to continue to inform OOG of the status of any such on-going investigations. The County must also promptly refer to OOG any credible evidence that a principal, employee, agent, Consultant, subcontractor, or other person has -- (1) submitted a claim for award funds that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving award funds. County must also immediately notify OOG in writing of any misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with grant requirements. County must notify the local prosecutor's office of any possible criminal violations.

26.18 Prompt Payment: The Consultant is required to pay its subcontractors performing work related to the Underlying Agreement for satisfactory performance of that work no later than 30 days after the Consultant's receipt of payment for that work from County. In addition, the Consultant is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work is satisfactorily completed.

26.19 Retention of Records: The Consultant agrees to maintain fiscal records and supporting documentation for all expenditures related to this Agreement pursuant to 2 CFR 200.333, UGMS, and state law. Consultant must retain, and will require its subcontractors of all tiers to retain, these records and any supporting documentation for a minimum period of not less than seven (7) years after the date of termination or expiration of the Agreement or any litigation, dispute, or audit arising from the performance of the Agreement. Records related to real property and equipment acquired with grant funds shall be retained for seven (7) years after final disposition.

26.20 Dispute Resolution: Consultant understands that for all subcontracts of \$250,000 or more, the Consultant must include terms to address dispute resolution between the parties who shall attempt in good faith to resolve promptly any dispute arising out of or relating to the Agreement by negotiation between the parties.

26.21 Termination for Cause and Termination for Convenience – Consultant understands that all contract 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.

26.22 Prohibited Telecommunications and Video Surveillance Services and Equipment – In the performance of this Agreement, Consultant certifies that they are in

compliance with the **John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA)**, Pub. L. No. 115-232 (2018) and that no part equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system will include any covered equipment or services as defined by section 889(f)(2)-(3) of the FY 2019 NDAA. “Covered equipment or services” shall include:

26.22.1 Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

26.22.2 For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

26.22.3 Telecommunications or video surveillance services provided by such entities or using such equipment; or

26.22.4 Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to the People’s Republic of China.

26.23 Whistleblower Protections – Consultant must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C. Section 2409, 41 U.S.C. 4712, and 10 U.S.C. Sections 2324, 41 U.S.C. Sections 4304 and 4310.

Section 27. Human Trafficking

BY ACCEPTANCE OF AGREEMENT, CONSULTANT ACKNOWLEDGES THAT THE 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.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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 last party hereto.

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

6-2-2021
Date

APPROVED:

Mark Vogler

Mark Vogler, Chief Engineer

APPROVED AS TO LEGAL FORM:

Marcus D. Spencer

Marcus D. Spencer, First Assistant County Attorney

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

May 12, 2021

Paige McInnis, CPPB
Assistant County Purchasing Agent
Fort Bend County
Travis Annex
301 Jackson, Suite 201
Richmond TX 77469

Dear Paige McInnis:

Please find the price proposal for RFQ-21-070 for Engineering Services for Flat Bank/Steep Bank Channel Repair for the Fort Bend County Drainage District FEMA Project 11898. At this stage surveys, designs, and geotechnical can be reasonably estimated, A&E construction fees are based on construction unknowns that are resolved when the design surveys, geotechnical analysis, construction drawings and construction performance time are complete. A&E construction fees are mostly determined by time of construction plus weather days. At this stage, we have estimated A&E construction times using two methods. 1. Historic M&E, construction projects which have (average 21.8%), (Mean 21.3 & 22.1), (job closest in value 20.6%). Assuming 20% of estimated construction cost. 2. Estimating time for previous formal bank stabilization contracts resulted in a construction services fee of 9.44%. M&E has incorporated into the price proposal; one local firm to assist in the project, Geo to assist with any geotechnical investigations and laboratory analysis. Because of the unknowns, subcontracting, and the cost of this project, the proposal presented are an effort to assure both parties are treated fairly. Liquidated damages or actual damages can and should be assessed the contractor to cover fees encountered by you as result of contractor not finishing within performance time granted in the construction contract. The fees documented in this contract should be considered in determining the amount of liquidated damages for the construction contractor.

Please see the attached spreadsheets for fees, work hour estimates and the lump sum total for the project.

We look forward with great excitement to working with Fort Bend County, Fort Bend County Drainage District, and FEMA in performing this work. If you have any question about our submittal, please call our main office in Temple (254-983-9103) or Trent Street (254-493-7496).

Sincerely,

Thomas P. Beach, PE
Partner

Cc: Adam Wright, Project Manager, Fort Bend County Drainage District

Contractor's Schedule of Billing Rates
ATTACHMENT - DETAILED PRICE BREAKDOWN
Solicitation No. RFQ 21-070

M&E Consultants, LLC														
(1) Item No.	(2) Description	(3) Unit	(4)		(5)	(6)	(7)	(8)		(9)	(10)	(11)	(12)	(13)
			Sub	Rate	Overhead 1.266	Subtotal	Profit @ 10%	Total Base Year	Base Year Rate	Option Year 1 Rate	Option Year 2 Rate	Option Year 3 Rate	Option Year 4 Rate	
ESCALATION FOR OPTION YEARS														
POSITIONS														
2 yr Rate														
1	Sr. Principal/President	HR	\$75.00	\$94.95	\$169.95	\$17.00	\$186.95	\$186.95						
2	Principal	HR	\$75.00	\$94.95	\$169.95	\$17.00	\$186.95	\$186.95						
3	Associate	HR	\$75.00	\$94.95	\$169.95	\$17.00	\$186.95	\$186.95						
4	Quality Assurance/Quality Control Manager	HR	\$66.00	\$83.56	\$149.56	\$14.96	\$164.52	\$164.52						
5	Project Manager/Project Engineer	HR	\$60.00	\$75.96	\$135.96	\$13.60	\$149.56	\$149.56						
7	Assistant Project Manager/Project Engineer	HR	\$40.00	\$50.64	\$90.64	\$9.06	\$99.70	\$99.70						
9	Contracts Manager	HR	\$75.00	\$94.95	\$169.95	\$17.00	\$186.95	\$186.95						
	Contracts Specialist	HR	\$46.00	\$58.24	\$104.24	\$10.42	\$114.66	\$114.66						
16	Sr. Agricultural Engineer	HR	\$65.00	\$82.29	\$147.29	\$14.73	\$162.02	\$162.02						
17	Mid-Level Agricultural Engineer	HR	\$45.00	\$56.97	\$101.97	\$10.20	\$112.17	\$112.17						
19	Sr. Civil Engineer	HR	\$70.00	\$88.62	\$158.62	\$15.86	\$174.48	\$174.48						
22	Design Engineer III	HR	\$69.00	\$87.35	\$156.35	\$15.64	\$171.99	\$171.99						
33	Senior Hydrology & Hydraulic Engineer	HR	\$50.00	\$63.30	\$113.30	\$11.33	\$124.63	\$124.63						
87	Mid-Level Environmental Specialist	HR	\$40.00	\$50.64	\$90.64	\$9.06	\$99.70	\$99.70						
92	Senior Planner	HR	\$65.00	\$82.29	\$147.29	\$14.73	\$162.02	\$162.02						
93	Mid-Level Planner	HR	\$40.00	\$50.64	\$90.64	\$9.06	\$99.70	\$99.70						
96	Senior Economist	HR	\$65.00	\$82.29	\$147.29	\$14.73	\$162.02	\$162.02						
	Sr. Biologist	HR	\$46.00	\$58.24	\$104.24	\$10.42	\$114.66	\$114.66						
105	CAD Technician II	HR	\$32.00	\$40.51	\$72.51	\$7.25	\$79.76	\$79.76						
117	Admin. Assistant	HR	\$19.00	\$24.05	\$43.05	\$4.31	\$47.36	\$47.36						
123	Survey Technician III	HR	\$32.00	\$40.51	\$72.51	\$7.25	\$79.76	\$79.76						
125	Survey Technician II	HR	\$29.00	\$36.71	\$65.71	\$6.57	\$72.28	\$72.28						
	Survey Technician I	HR	\$18.00	\$22.79	\$40.79	\$4.08	\$44.87	\$44.87						
126	Rodman	HR	\$14.00	\$17.72	\$31.72	\$3.17	\$34.89	\$34.89						
127	Two-man survey crew includes equipment	HR	\$84.00	\$106.34	\$190.34	\$19.03	\$209.37	\$209.37						
128	Three man survey crew includes equipment	HR	\$107.00	\$135.46	\$242.46	\$24.25	\$266.71	\$266.71						
129	Four man survey crew includes equipment	HR	\$126.00	\$159.52	\$285.52	\$28.55	\$314.07	\$314.07						
133	Senior Construction Inspector	HR	\$29.00	\$36.71	\$65.71	\$6.57	\$72.28	\$72.28						
134	Mid-Level Construction Inspector	HR	\$27.00	\$34.18	\$61.18	\$6.12	\$67.30	\$67.30						

Contractor's Schedule of Billing Rates
ATTACHMENT - DETAILED PRICE BREAKDOWN
Solicitation No. RFQ 21-070

M&E Consultants, LLC												
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Item No.	Description	Unit	Sub Rate	Overhead	Subtotal	Profit @ 10%	Total Base Year	Base Year Rate	Option Year 1 Rate	Option Year 2 Rate	Option Year 3 Rate	Option Year 4 Rate
135	Construction Inspector	HR	\$18.00	1,266	\$40.79	\$4.08	\$44.87	\$44.87				
	Senior Soil Conservation Technician	HR	\$28.00	\$35.45	\$63.45	\$6.34	\$69.79	\$69.79				
	Equipment/Materials											
211	Total Station with Data Collection	Day	\$80.00	\$0.00	\$80.00	\$0.00	\$80.00	\$80.00				
	UTV	Day	\$89.00	\$0.00	\$89.00	\$ -	\$ 89.00	\$ 89.00				
All transportation related items will be at JTR rates					All travel will be in accordance with Texas Standard Per Diem and mileage rates							

**Fort Bend County RFQ 21-070 Cost Proposal Flat Bank/Steep Bank
Channel Repairs for the Fort Bend County Drainage District**

Engineering Services, Inspection Services

Total Proposed Price: \$ 214,860.10

Department of Homeland Security Federal Emergency Management Agency

General Info

Project #	11898	Project Type	Standard
Project Category	D - Water Control Facilities	Applicant	Fort Bend (County) (157-99157-00)
Project Title	FORT BEND COUNTY - FLAT BANK/STEEP BANK CREEK CHANNEL	Event	4332DR-TX (4332DR)

Damage Description and Dimensions

The Disaster # 4332DR, which occurred between *08/23/2017* and *09/15/2017*, caused:

Damage #53504; Flat Bank/Steep Bank Creek Channel repair

General Facility Information:

- **Facility Type:** Drainage Channels and Navigational Waterways
- **Facility:** County Drainage Channel
- **Facility Description:** a 18,233 FT length segment of engineered channel with vegetative unlined 3:1 slop embankments
- **Year Built:** 1951
- **Location Description:** Flat Bank/Steep Bank Creek and Flat Bank Channel Richmond, Fort Bend County, TX 77469
- **Start GPS Latitude/Longitude:** 29.51036, -95.55779
- **End GPS Latitude/Longitude:** 29.53953, -95.55298
- **Purpose:** Flood Control
- **Shape:** Trapezoidal
- **Dimensions (top) Width (ft):** 200
- **Dimensions (top) Depth (ft):** 30
- **Quantity of Material Deposited by Incident:** 26,564.09 CY of soil (fill) sloughed and was washed down stream or

General Damage Information:

- **Date Damaged:** 8/30/2017
- **Cause of Damage:** standing and moving surface water flooding which saturated the channel banks during the incident period

Facility Damage:

S01 29.510357,-95.557793 to 29.510525,-95.558250 Flat Bank/Steep Bank Creek Channel:

- Embankment, 5,555.56 CY of soil (fill) with surface vegetation, 150 FT long x 50 FT wide x 20 FT deep, erosion from sloughing of the south side embankment caused by destabilization from water saturation, 0% work completed.

S02 29.510691,-95.557954 to 29.510747,-95.558198 Flat Bank/Steep Bank Creek Channel:

- Embankment, 1,777.78 CY of soil (fill) with surface vegetation, 80 FT long x 60 FT wide x 10 FT deep, erosion from sloughing of the north side embankment caused by destabilization from water saturation, 0% work completed.

S03 29.510800,-95.558500 to 29.510889,-95.558935 Flat Bank/Steep Bank Creek Channel :

- Embankment, 1,288.89 CY of soil (fill) with surface vegetation, 145 FT long x 40 FT wide x

6 FT deep, erosion from sloughing of the north side embankment caused by destabilization from water saturation , 0% work completed.

S04 29.510558,-95.558891 to 29.510656,-95.559067 Flat Bank/Steep Bank Creek Channel:

- Embankment, 1,527.78 CY of soil (fill) with surface vegetation, 55 FT long x 50 FT wide x 15 FT deep, erosion from sloughing of the south side embankment caused by destabilization from water saturation, 0% work completed.

S05 29.510790,-95.562393 to 29.511034,-95.562912 Flat Bank/Steep Bank Creek Channel:

- Embankment, 592.59 CY of soil (fill) with surface vegetation, 200 FT long x 20 FT wide x 4 FT deep, erosion from sloughing of the south side embankment caused by destabilization from water saturation, 0% work completed.

S06 29.511237,-95.562718 to 29.511329,-95.562883 Flat Bank/Steep Bank Creek Channel:

- Embankment, 888.89 CY of soil (fill) with surface vegetation, 60 FT long x 40 FT wide x 10 FT deep, erosion from sloughing of the north side embankment caused by destabilization from water saturation, 0% work completed.

S07 29.511293,-95.563549 to 29.511211,-95.563896 Flat Bank/Steep Bank Creek Channel:

- Embankment, 1,192.59 CY of soil (fill) with surface vegetation, 115 FT long x 35 FT wide x 8 FT deep, erosion from sloughing of the south side embankment caused by destabilization from water saturation, 0% work completed.

S08 29.511243,-95.563923 to 29.511171,-95.564453 Flat Bank/Steep Bank Creek Channel:

- Embankment, 925.93 CY of soil (fill) with surface vegetation, 200 FT long x 25 FT wide x 5 FT deep, erosion from sloughing of the south side embankment caused by destabilization from water saturation, 0% work completed.

S09 29.518239,-95.567043 to 29.518650,-95.566263 Flat Bank/Steep Bank Creek Channel:

- Embankment, 902.22 CY of soil (fill) with surface vegetation, 290 FT long x 12 FT wide x 7 FT deep, erosion from sloughing of the north side embankment caused by destabilization from water saturation, 0% work completed.

S10 29.519839,-95.565820 to 29.520022,-95.565980 Flat Bank/Steep Bank Creek Channel:

- Embankment, 385.19 CY of soil (fill) with surface vegetation, 65 FT long x 20 FT wide x 8 FT deep, erosion from sloughing of the north side embankment caused by destabilization from water saturation, 0% work completed.

S11 29.521515,-95.564382 to 29.521547,-95.563902 Flat Bank Channel:

- Embankment, 234.07 CY of soil (fill) with surface vegetation, 158 FT long x 8 FT wide x 5 FT deep, erosion from sloughing of the southwest side embankment caused by destabilization from water saturation, 0% work completed.

S12 29.521725,-95.564380 to 29.521727,-95.563820 Flat Bank Channel:

- Embankment, 400 CY of soil (fill) with surface vegetation, 180 FT long x 15 FT wide x 4 FT deep, erosion from sloughing of the northeast side embankment caused by destabilization from water saturation, 0% work completed.

S13 29.521562,-95.562955 to 29.521561,-95.562529 Flat Bank Channel:

- Embankment, 755.56 CY of soil (fill) with surface vegetation, 136 FT long x 10 FT wide x 15 FT deep, erosion from sloughing of the southwest side 2:1 slope embankment caused by destabilization from water saturation, 0% work completed.

S14 29.523245,-95.561800 to 29.524349,-95.561830 Flat Bank Channel:

- Embankment, 1,066.67 CY of soil (fill) with surface vegetation, 400 FT long x 12 FT wide x 6 FT deep, erosion from sloughing of the southwest side embankment caused by destabilization from water saturation, 0% work completed.

S15 29.525389,-95.561946 to 29.527361,-95.562013 Flat Bank Channel:

- Embankment, 3,222.22 CY of soil (fill) with surface vegetation, 725 FT long x 20 FT wide x 6 FT deep, erosion from sloughing of the east side embankment caused by destabilization from water saturation, 0% work completed.

S16 29.525391,-95.562172 to 29.526913,-95.562225 Flat Bank Channel:

- Embankment, 3,666 CY of soil (fill) with surface vegetation, 550 FT long x 30 FT wide x 6 FT deep, erosion from sloughing of the west side embankment caused by destabilization

from water saturation, 0% work completed.

S17 29.535228,-95.562384 to 29.535449,-95.562391 Flat Bank Channel:

- Embankment, 370.37 CY of soil (fill) with surface vegetation, 80 FT long x 25 FT wide x 5 FT deep, erosion from sloughing of the east side embankment caused by destabilization from water saturation, 0% work completed.

S18 29.535618,-95.562576 to 29.536074,-95.562588 Flat Bank Channel:

- Embankment, 1,422.22 CY of soil (fill) with surface vegetation, 160 FT long x 30 FT wide x 8 FT deep, erosion from sloughing of the west side embankment caused by destabilization from water saturation, 0% work completed.

S19 29.539283,-95.553496 to 29.539315,-95.552950 Flat Bank Channel:

- Embankment, 388.89 CY of soil (fill) with surface vegetation, 175 FT long x 10 FT wide x 6 FT deep, erosion from sloughing of the south side embankment caused by destabilization from water saturation, 0% work completed.

Site location maps showing the current damage and 1/2017 google earth maps show damage before the event. Note the similarity of damage for each time period for sites S6, S9, S12, S14, S15, S16, S18, and S19.

There was limited accessibility to the damage embankment Sites S2, S3, S6, S9, S10, S11, S13, S14, S15, S17, and S19. These sites were inspected across the channel from the damaged embankments.

Scope of Work

53504 Flat Bank/Steep Bank Creek Channel repair

Work to be completed

The applicant will utilize contract and or force account to restore this facility back to its pre-disaster design, function, and capacity within the existing footprint.

- A. Site 1 (29.510357,-95.557793 to 29.510525,-95.558250) Replace 276 CY of embankment
- B. Site 2 (29.510691,-95.557954 to 29.510747,-95.558198) Replace 241 CY of embankment
- C. Site 3 (29.510800,-95.558500 to 29.510889,-95.558935) Replace 1,178 CY of embankment
- D. Site 4 (29.510558,-95.558891 to 29.510656,-95.559067) Replace 379 CY of embankment
- E. Site 5 (29.510790,-95.562393 to 29.511034,-95.562912) Replace 334 CY of embankment
- F. Site 6 (29.511237,-95.562718 to 29.511329,-95.562883) Replace 276 CY of embankment
- G. Site 7 (29.511293,-95.563549 to 29.511211,-95.563896) Replace 723 CY of embankment
- H. Site 8 (29.511243,-95.563923 to 29.511171,-95.564453) Replace 951 CY of embankment
- I. Site 9 (29.518239,-95.567043 to 29.518650,-95.566263) Replace 557 CY of embankment
- J. Site 10 (29.519839,-95.565820 to 29.520022,-95.565980) Replace 238 CY of embankment
- K. Site 11 (29.521515,-95.564382 to 29.521547,-95.563902) Replace 246 CY of embankment
- L. Site 12 (29.521725,-95.564380 to 29.521727,-95.563820) Replace 235 CY of embankment
- M. Site 13 (29.521562,-95.562955 to 29.521561,-95.562529) Replace 713 CY of embankment

- N. Site 14 (29.523245,-95.561800 to 29.524349,-95.561830) Replace 480 CY of embankment
- O. Site 15 (29.525389,-95.561946 to 29.527361,-95.562013) Replace 510 CY of embankment
- P. Site 16 (29.525391,-95.562172 to 29.526913,-95.562225) Replace 459 CY of embankment
- Q. Site 17 (29.535228,-95.562384 to 29.535449,-95.562391) Replace 27 CY of embankment
- R. Site 18 (29.535618,-95.562576 to 29.536074,-95.562588) Replace 267 CY of embankment
- S. Site 19 (29.539283,-95.553496 to 29.539315,-95.552950) Replace 324 CY of embankment

Work to be Completed Total: **\$455,140.07**

Cost Estimating Format Total \$652,402.00

Project Notes:

1. All site estimates for work to be completed were generated using TX DOT rates. See attachment labeled *ST 11898 Cost Estimate*.
2. A Cost Estimating Format (CEF) has been created for this project, see attachment labeled *ST 11898 CEF Cost Estimate*.
3. Per the PDMG the DDD quantities are based on areas effected by multiple disasters and do not represent recent disaster quantities of eroded embankment. Estimate quantities for embankment are based on GM document *Completed Proj 11898 CY Scope Report.pdf*.
4. The Facility was initially reviewed and found to not be part of USACE responsibility, however the watershed area should be verified by the Applicant prior to work, along with other applicable jurisdiction/entity authority(s), for the purposes of proper permitting and procedures (if required). The damage Facility type is not considered as a typical ineligible Flood control Work (FCW) structure (Dams, Channels, Levees, other), and as such, per USACE EP 500-1-1, the damage Facility can be considered as eligible, providing erosion control measures; particularly, Ditch/Channel/Bank erosion control structure(s), which are not to be considered as an ineligible FCW. Facilities are not under the Federal Rehabilitation Program (RIP) and do not apply under NRCS funding.
5. Fill/Backfill and/or Borrow material is expected to be originally sourced from location: 9519 Galveston Road, Houston TX GPS: 29.62972, -95.201850. Final spoils and fill/backfill material location(s) will be confirmed and identified by the Applicant.
6. The Applicant has not identified a possible Alternate Method of Repair - this SOW and costing reflects pre-disaster repairs; any eligible alternate repairs may be captured in a future Version of this Project.
7. All work will be completed within the Applicant's ROW; if staging of equipment and materials would be needed they will be staged within the Applicant's ROW.
8. Applicant is requesting 406 Mitigation.

406 HMP Scope

Hazard Mitigation Proposal (HMP) Sample Template:

GM Project # 11898, EMMIE PW # 04913, DR-4332- TX (State)

GM Damage Inventory # 53504, Applicant Fort Bend (County) (157-99157-00) Facility Name FLAT BANK/STEEP BANK CREEK CHANNEL, Critical Facility? No Site Name/No. Flat Bank/Steep Bank Creek Channel repair

GPS Lat / Lon: 29.582322, -95.760781

Site Address: Richmond, Texas

(I) Damage Description & Dimensions (DDD):

The damage being mitigated includes severe storms, flooding and hurricane force winds resulting in widespread damage within the disaster area. The storm event at this site (between 29.510357 - 95.557793 and 29.539528 -95.552979) caused erosion of channel due to high velocity floodwaters. Flat Bank/Steep Bank Creek Channel repair (built in 1951) is a county drainage channel described as a 18,233 FT length segment of engineered channel with vegetative unlined 3:1 slope embankments, located at Flat Bank/Steep Bank Creek and Flat Bank Channel Richmond, Fort Bend County, TX 77469. It is a(n) Trapezoidal shaped drainage channel or navigational waterway used for Flood Control purposes. The top dimensions of the channel/waterway are 200ft wide and 30ft deep, where 26,564.09 CY of soil (fill) sloughed was washed down stream or deposited by the incident.

Total repair cost of damaged elements (Pre-disaster) being protected by the HMP at this site =

\$455,104.07 (before CEF Factors).

(II) Hazard Mitigation Proposal (HMP) Scope of Work:

Mitigation consists of the installation of earth stabilization erosion control armoring or similar type product. Engineered Bank Stabilization system designed to resist extreme hydraulic stresses and protect shorelines. The product is designed for applications that need below water scour protection in addition to slope stabilization and erosion control. Constructed of rigid cells armored with High Performance Turf Reinforcement Mat (HPTRM) and internally lined with nonwoven geotextile. Fastened to the rigid cells to provide a flexible exterior, control erosion, and improve system durability and forms pockets that can be filled with mulch or other media to promote and sustain vegetation. The durable geotextile lining allows the rigid cell to be filled with earth, sand, gravel, crushed rock and other granular material. Appendix J: I.B

For the purpose of erosion control, add properly designed entrance and exit structures, such as a headwall, wingwalls, flared aprons, or energy dissipation measures to increase efficiency and help to minimize scour and erosion. Depending on the severity of erosion, solutions for bank protection may include gabion baskets, rip rap, cast-in-place concrete, crushed stone or rock, grouted rip rap 395, sheet-piling, geotextile fabric, or similar measures to control erosion. Alternatively, the use of vegetation or a combination of vegetation and construction materials such as live fascines, vegetated geogrids, live cribwalls, brushmattresses, root wads, or similar measures are eligible. The Applicant should consider using green infrastructure techniques such as bioswales, bioretention, rain gardens and similar techniques that may be used in public drainage systems.

(III) Hazard Mitigation Proposal (HMP) Cost: (Reference & attach detailed cost estimate) Subtotal

of cost of Items Needed if the HMP is Approved = \$ 438,438 (\$ additional) Subtotal of cost of Items Not Needed if the HMP is Approved = \$ 0.00 (\$ deduction)

Net hazard mitigation cost (before CEF Factors) = \$438,438 (\$ additional - \$ deduction)

If large project, include CEF Factors. Net Hazard Mitigation cost = \$ 626,966.34 (See Attached CEF document) CEF Factor 1.43

(IV) Cost Effectiveness Calculation:

HMP Cost/Benefit % = (Net Hazard Mitigation Cost / Total Repair Cost of Damaged Elements being protected by the HMP) X 100

HMP C/B % = \$438,438 / \$455,140.07 (before CEF Factors) x 100 = 96.33 % < 15% (or < 100%). If over 100%, consider a Benefit-Cost Analysis (BCA).

(V) HMP Cost-Effectiveness:

Cost-effectiveness criteria per FEMA Public Assistance Program and Policy Guide (PAPPG) Chapter 2. Section VII. C include a) mitigation cost is within 15% of the repair cost for which the mitigation measure applies, b) cost of mitigation measure listed in Appendix J is within 100% of the repair cost for which the mitigation measure applies, and c) mitigation measure is cost-effective through a benefit-cost analysis (BCA).

This Hazard Mitigation Proposal cost is 96.33 % of the repair and restoration costs being protected. In accordance with FEMA Public Assistance Program and Policy Guide (PAPPG) V3.1 April 2018, Chapter

2.VII. Section C and Appendix J. Section I.B., this mitigation measure does not exceed 15 (or 100) percent of the eligible repair cost and is considered to be cost effective.

(VI) Compliances and Assurances:

If this HMP is approved and the mitigation is not performed, the Applicant must apply for a change in the Scope of Work and a de-obligation of the HMP funding. Failure to complete the work of the HMP may limit future FEMA funding of repairs at the site in the event that a similar disaster event results in similar damage at the site.

This HMP is for estimating purposes only. If the site's final placement and configuration are different than the preliminary estimate, the Applicant should submit a change in scope request.

This HMP is subject to further review prior to award.

The Applicant is responsible for final design, placement, configuration, choice of contractors or vendors, permits and compliance with all regulatory codes and standards of the State of Texas. FEMA will pay only the incremental difference in cost between repairs and mitigation, and will not duplicate funding for repair or replacement of eligible work.

Eligibility and funding for the mitigation at this site on this project will be subject to the compliance of all environmental laws, regulations, and executive orders applicable to the sites.

Cost

Code	Quantity	Unit	Total Cost	Section
9000 (CEF Cost Estimate)	1.00	Lump Sum	\$652,402.00	Uncompleted

CRC Gross Cost	\$652,402.00
Total 406 HMP Cost	\$626,966.34
Total Insurance Reductions	\$0.00
<hr/>	
CRC Net Cost	\$1,279,368.34
Federal Share (90.00%)	\$1,151,431.51
Non-Federal Share (10.00%)	\$127,936.83

Subgrant Conditions

- As described in 2 CFR, Part 200 § 200.333, financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a sub-recipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. Exceptions, Part 200.333, (a) – (f), (1), (2). All records relative to this Project Worksheet are subject to examination and audit by the State, FEMA and the Comptroller General of the United States and must reflect work related to disaster-specific costs.
- In the seeking of proposals and letting of contracts for eligible work, the Applicant/Subrecipient must comply with its Local, State (provided that the procurements conform to applicable Federal law) and Federal procurement laws, regulations, and procedures as required by FEMA Policy 2 CFR Part 200, Procurement Standards, §§ 317-326.
- The Recipient must submit its certification of the applicant's completion of this project, the final claim for payment, and supporting documentation within 180 days from the date that the applicant completes the scope of work. Project Worksheets written as large projects (costs above the large project threshold) are reimbursed based on the actual eligible final project costs. Therefore, during the final project reconciliation (closeout), the project may be amended to reflect the reconciliation of actual eligible costs.
- The terms of the FEMA-State Agreement are incorporated by reference into this project award under the Public Assistance grant and the applicant must comply with all applicable laws, regulations, policy, and guidance. This includes, among others, the Robert T. Stafford Disaster Relief and Emergency Assistance Act; Title 44 of the Code of Federal Regulations; FEMA Policy No. 104-009-2, Public Assistance Policy and Program Guide; and other FEMA policy and guidance.
- The DHS Standard Terms and Conditions in effect as of the date of the declaration of this major disaster are incorporated by reference into this project award under the Public Assistance grant, which flow down from the Recipient to subrecipients unless a particular term or condition indicates otherwise.
- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth at 2 C.F.R. pt. 200 apply to this project award under the Public Assistance grant, which flow down from the Recipient to all subrecipients unless a particular section of 2 C.F.R. pt. 200, the FEMA-State Agreement, or the terms and conditions of this project award indicate otherwise. See 2 C.F.R. §§ 200.101 and 110.
- The applicant must submit a written request through the Recipient to FEMA before it makes a change to the approved scope of work in this project. If the applicant commences work associated with a change before FEMA approves the change, it will jeopardize financial assistance for this project. See FEMA Policy No. 104-009-2, Public Assistance Program and Policy Guide.

Insurance

Additional Information

7-23-19

Property insurance coverage for the Water Control Facilities represented on this project are not insured or insurable. No insurance relief is anticipated. No Obtain and Maintain requirement will be made.

FEMA requires the Applicant to take reasonable efforts to pursue claims to recover insurance proceeds that it is entitled to receive from its insurer(s). In the event that any insurance proceeds are received for these expenses those proceeds must be reduced from FEMA Public Assistance funding to ensure no duplication of benefits has occurred.

No duplication of benefits from insurance is anticipated for work described in this application. In the event any part or all costs are paid by an insurance policy, a duplication of benefits from insurance will occur. Applicant must notify grantee and FEMA of such recoveries and the Sub-Grant award amount must be reduced by actual insurance proceeds.

No insurance requirements are mandated for the work included on this project. FEMA insurance requirements are specific to permanent work to replace, restore, repair, reconstruct, or construct buildings, contents, equipment, and vehicles (FEMA Recovery Policy FP 206-086-1).

No insurance Narrative will be produced or uploaded into documents or attachments.

- Cesar Maitre – Insurance Specialist – TX CRC

O&M Requirements

There are no Obtain and Maintain Requirements on **FORT BEND COUNTY - FLAT BANK/STEEP BANK CREEK CHANNEL**.

406 Mitigation

There is no additional mitigation information on **FORT BEND COUNTY - FLAT BANK/STEEP BANK CREEK CHANNEL**.

Environmental Historical Preservation

Is this project compliant with EHP laws and orders?

Yes

EHP Conditions

- Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize funding.
- If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archaeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.
- Applicant must coordinate with the local floodplain administrator and obtain required permits prior to initiating work, including any necessary certifications that encroachments within the adopted regulatory floodway would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Applicant must comply with any conditions of permit and all coordination pertaining to these activities should be retained as part of the project file in accordance with the respective grant program instructions.
- The applicant is responsible for coordinating with and obtaining any required Section 404 Permit(s) from the United States

Army Corps of Engineers (USACE) and/or any Section 401/402 Permit(s) from the State prior to initiating work. The applicant must comply with all conditions of the required permit(s). All coordination pertaining to these activities should be retained as part of the project file in accordance with the respective grant program instructions.

EHP Additional Info

There is no additional environmental historical preservation on **FORT BEND COUNTY - FLAT BANK/STEEP BANK CREEK CHANNEL.**

Final Reviews

Final Review

Reviewed By MCALLISTER, JAMIE L.

Reviewed On 09/03/2019 12:00 PM CDT

Review Comments

9.3.2019: This project is eligible for FEMA funding. JMcAllister TRO/R6 PA

Recipient Review

Reviewed By Velarde, Makayla

Reviewed On 09/03/2019 1:37 PM CDT

Review Comments

No comments available for the Recipient Review step

Project Signatures

Signed By Unsigned

Signed On Unsigned