

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

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

THIS 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 the preparation of plans and the construction management of FEMA Project 11898 Flat Blank/Steep Bank Channel Repair in Fort Bend County, Texas, on June 8, 2021 pursuant to RFQ 21-070, (hereinafter "Agreement"); and

WHEREAS, the parties desire to amend the Agreement to increase the Maximum Compensation payable to complete the Services to be provided under such Agreement.

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

1. The District shall pay the Consultant an additional one hundred forty thousand seven hundred seventy-two dollars and 90/100 (\$140,772.90) to perform the proposed additional Services as described in Consultant's proposal dated May 22, 2022, attached hereto as Exhibit "A" and incorporated herein for all purposes.
2. The Maximum Compensation payable to Consultant for all Services to be rendered is hereby increased to an amount not to exceed three hundred fifty-five thousand six hundred thirty-three dollars and no/100 (\$355,633.00), authorized as follows:

\$214,860.10 under the Agreement; and
\$140,772.90 under this Amendment.
3. In no case shall the amount paid by District for all Services under the Agreement and this Amendment exceed the Maximum Compensation without an agreement executed by the parties.

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.

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



Authorized Agent - Signature

Date

Thomas P. Beach

Authorized Agent - Printed Name

ATTEST:

Partner

Title

Laura Richard, County Clerk

4-5-2022

Date

APPROVED:



Mark Vogler, Chief Engineer

AUDITOR'S CERTIFICATE

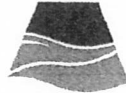
I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of the Fort Bend County Drainage District under this contract.

Robert Ed Sturdivant, County Auditor

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Amendment to Agreement for Professional Engineering Services for
Flat Bank/Steep Bank Channel Repair – RFQ 21-070

EXHIBIT A



M&E Consultants
Soil & Water Engineering Solutions

March 22, 2022

Adam Wright
Project Coordinator
Fort Bend County Drainage District
P.O. Box 1028
Rosenberg, TX 77471

Fort Bend County
301 Jackson, Suite 210
Richmond TX 77469

Dear Adam:

Please find the proposed amendment requesting additional cost to the existing contract and its attachments for Professional Services for Flat Bank/ Steep Bank Channel Repair Project FEMA Project 11898 RFQ 21-070, PO 200824 for your consideration. This amendment adds additional compensation to our existing contract, for design cost, and to provide construction management for the repairs, sites 14-19.

The performance time for M&E's A&E services is not estimated to increase from the current Time of Performance. The current PO Number 200824 delivery date is 12-31-2023.

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

Sincerely,

Thomas P. Beach, PE
M&E Consultants, LLC
Partner

Amendment Request

Pursuant to Section 3. Compensation and Payment, the Agreement for Professional Engineering Services For Flat Bank/ Steep Bank Channel Repair, FEMA Project Number 11898, RFQ 21-070 shall be amended as follows:

AGREEMENT as AMENDED

Section 3. Compensation and Payment

Maximum Compensation for the performance of Services within the Proposal described in Exhibit B is an amount of three hundred fifty- five thousand six hundred thirty- three dollars (\$355,633.00)

Section 4. Limits of Appropriation

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 three hundred fifty- five thousand six hundred thirty- three dollars (\$355,633.00), specifically allocated to fully discharge any and all liabilities District may incur.

DeLeon, Wendy

From: Wright, Adam
Sent: Sunday, March 27, 2022 3:08 PM
To: Kovar, Jaime
Cc: DeLeon, Wendy
Subject: Re: PO 200824 -Request for Price Increase amendment

I will work with Wendy on it tomorrow.

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From: Kovar, Jaime <Jaime.Kovar@fortbendcountytx.gov>
Sent: Sunday, March 27, 2022 11:40:25 AM
To: Wright, Adam <Adam.Wright@fortbendcountytx.gov>
Cc: DeLeon, Wendy <Wendy.DeLeon@fortbendcountytx.gov>
Subject: RE: PO 200824 -Request for Price Increase amendment

Adam,

Your office will need to enter a request in OnBase (with the attached as backup) for an Amendment to RFQ 21-070 for an increase of \$140,772.90. Once received, we'll send to County Attorney's Office to prepare the amendment to the current agreement.

Jaime Kovar

Purchasing Agent
Fort Bend County
301 Jackson, Suite 201
Richmond, TX
281.341.3724
Jaime.Kovar@fortbendcountytx.gov

From: Wright, Adam <Adam.Wright@fortbendcountytx.gov>
Sent: Thursday, March 24, 2022 7:33 AM
To: Kovar, Jaime <Jaime.Kovar@fortbendcountytx.gov>
Cc: DeLeon, Wendy <Wendy.DeLeon@fortbendcountytx.gov>
Subject: RE: PO 200824 -Request for Price Increase amendment

Jaime,

Sorry for the confusion. The scope of work is for the construction and not the Engineering contract. The increase in cost is for the additional design cost and construction management. I have been in submitted all the appropriate documentation to FEMA for the change of scope. The reason for the change of scope is because FEMA's hazard mitigation proposal for the project had to be changed due to soil conditions.

Adam Wright

Fort Bend County Drainage District
281-342-0141

Adam.Wright@fortbendcountytexas.gov

From: Kovar, Jaime <Jaime.Kovar@fortbendcountytexas.gov>
Sent: Wednesday, March 23, 2022 3:29 PM
To: Wright, Adam <Adam.Wright@fortbendcountytexas.gov>
Cc: DeLeon, Wendy <Wendy.DeLeon@fortbendcountytexas.gov>
Subject: RE: PO 200824 -Request for Price Increase amendment

Adam,

Based on the M&E budgets, it appears that the additional work is similar as to what was in the contract, but your email states "had a major design change due to what FEMA had originally proposed for the scope of work." This indicates that the revised scope of work will be different than what is currently contemplated in the contract and presumably what was bid out. Therefore, I would need additional justification regarding this change. Is this indeed a complete design change or does the additional design work fall within the scope of work previously solicited? By answering these questions, it will help determine if we are able to request a modification to the current contract or bid out the new scope of work. If it's a complete design change, this revises the scope of work and we must solicit.

Remember, this is federal money. While FEMA recommends that contracts include change order language to account for changes in the work or price, among other things, more substantive changes to a contract will receive additional scrutiny, especially if FEMA construes the change as a "cardinal change." FEMA defines a cardinal change as "a significant modification in contract work (property or services), costs, or time that causes:

- A major deviation from the original purpose of the work or the intended method of achievement; or
- A revision of contract work, costs, or time so extensive, significant, or cumulative that the contractor is required to perform very different work from that described in the original contract."

FEMA evaluates "whether the change is 'within the general scope of the contract' and 'within the scope of competition' on a case-by-case basis." In making this determination, FEMA will compare the nature, cost, timeline, and level of effort associated with the new work with the same criteria for the original scope of work. FEMA will also evaluate whether there is a material difference between the add-on services and the contract scope of work that was originally bid out.

Given the price increase and the fact that you state "major design change," it's likely FEMA would similarly deem the M&E amendment a cardinal change. This would mean we would need to formally advertise the project.

I'll await a response to my questions above prior to making a decision on moving forward.

Jaime Kovar

Purchasing Agent
Fort Bend County
301 Jackson, Suite 201
Richmond, TX
281.341.3724
Jaime.Kovar@fortbendcountytexas.gov

From: Wright, Adam <Adam.Wright@fortbendcountytexas.gov>
Sent: Wednesday, March 23, 2022 12:29 PM
To: Kovar, Jaime <Jaime.Kovar@fortbendcountytexas.gov>
Cc: DeLeon, Wendy <Wendy.DeLeon@fortbendcountytexas.gov>
Subject: PO 200824 -Request for Price Increase amendment

Jaime,

M&E is requesting a modification to the contract for a price increase. We had a major design change due to what FEMA had originally proposed for the scope of work. The price increase is for an increase in design time, geologic cost exceeded original estimated cost and construction cost and performance time is estimated to increase from initial proposal.

Adam Wright

Fort Bend County Drainage District

281-342-0141

Adam.Wright@fortbendcountytx.gov