

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AMENDMENT TO AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES**

THIS AMENDMENT (“Amendment”), is made and entered into by and between Fort Bend County (hereinafter “County”), a body corporate and politic under the laws of the State of Texas, and RPS Infrastructure, Inc., (hereinafter “Consultant”), a company authorized to conduct business in the State of Texas (collectively referred to as the “parties.”).

WHEREAS, the parties executed and accepted that certain Agreement for Professional Engineering Services on July 26, 2022, (hereinafter “Agreement”) pursuant to SOQ 14-025 concerning improvements to Julia Avenue under Project No. 20224x of the Fort Bend County Mobility Program; and

WHEREAS, the parties desire to amend the Agreement for additional professional engineering services to be provided and increase the total Maximum Compensation for such additional services.

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

1. County shall pay Consultant an additional Five Thousand, Five Hundred Eighty-Five dollars and 00/100 (\$5,585.00) for the additional professional engineering services as described in Consultant’s proposal dated June 13, 2023 attached hereto as Exhibit “A” and incorporated herein for all purposes.
2. The Maximum Compensation payable to Consultant for Services rendered is hereby increased to an amount not to exceed One Hundred Forty-Five Thousand, Four Hundred Forty-Five dollars and 00/100 (\$145,445.00), authorized as follows:
 \$139,860.00 under the Agreement; and
 \$5,585.00 under this Amendment.
3. In no case shall the amount paid by County for all Services under the Agreement and this Amendment exceed the Maximum Compensation without further written agreement executed by the parties.
4. BY ACCEPTANCE OF AGREEMENT, CONSULTANT ACKNOWLEDGES THAT THE COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT

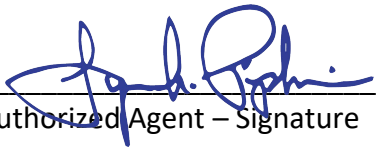
NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

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

FORT BEND COUNTY

RPS INFRASTRUCTURE, INC.

KP George, County Judge



Authorized Agent – Signature

Date

Lynn Pipkin, P.E.

Authorized Agent – Printed Name

ATTEST:

Transport Leader, Houston

Title

Laura Richard, County Clerk

September 6, 2023

Date

APPROVED:



J. Stacy Slawinski, P.E., County Engineer

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: Consultant's proposal dated June 13, 2023

EXHIBIT A

Our ref: 008208

575 N. Dairy Ashford
Suite 700
Houston, Texas 77079
T +1 281 589 7257

Date: June 13, 2023

Mr. Stacy Slawinski, PE
Fort Bend County Engineering
301 Jackson Street
Richmond, Texas 77469
ATTN: Mr. Ike Akinwande, PE

Subject: 20224x Julia Avenue (PO #215736) Amendment #1 - Proposal for the Right-of-Way Staking of Julia Avenue Cul-de-sac in Fort Bend County, Texas

Dear Mr. Ike Akinwande,

We appreciate the opportunity to work with the County for engineering services for Julia Avenue 20224x. As requested, this is a surveying services proposal for construction staking as shown in the attached Exhibit A.

We propose adding **\$5,585.00** appended to our Julia Avenue contract.

TASK	METHOD OF COMPENSATION	AMOUNT
Design Services	Time & Material	\$1,920.00
Survey for Construction Staking (MBCO)	Lump Sum	\$3,665.00
TOTAL		\$5,585.00

We anticipate the following breakdown of additional project management effort:

- Senior Project Manager 8 hrs. x \$240 = \$1,920.00

RPS appreciates the opportunity to prepare this proposal for Fort Bend County Engineering and hopes that it meets with your approval. If you have any questions concerning this proposal, please feel free to contact me directly. RPS looks forward to a successful project delivery.

Yours sincerely,
for RPS Infrastructure, Inc.



Gabriel Odreman, PE, PMP
Senior Project Manager
gabriel.odreman@rpsgroup.com
+1 (281) 902-3501



1505 Highway 6 South, Suite 180
Houston, Texas 77077
281.760.1656
MBCOEngineering.com

SBE/WBE/DBE/HUB
TBPELS Firm No. F-16850

PROPOSAL FOR LAND SURVEYING SERVICES

May 25, 2023

Gabriel Odreman, P.E., PMP
RPS North America
575 North Dairy Ashford, Suite 700
Houston, TX 77079

Ref: Request for Right-of-way (ROW) staking of the Julia Avenue cul-de-sac in Fort Bend County (FBC), Texas.

Dear Mr. Odreman:

MBCO is pleased to submit this proposal for professional surveying services for the scope provided in an email on May 16, 2023, which will consist of construction staking of an area shown on shown in Exhibit "A" below.

CONTROL

- MBCO will check previously established project control.
- If project control has been removed, damaged, or destroyed and is not recoverable and usable additional fees will apply.

CONSTRUCTION STAKING

MBCO will stake with lath and flagging the cul-de-sac right-of-way of Julia Avenue as shown on Exhibit "A" including, but not limited to the following:

- MBCO will stake, with lath and flagging, the ROW PC's, PT's, and points along the curve at approximate intervals of 25 to 50 foot stations. MBCO will also stake one 50 foot station on the tangent sections of the Julia Ave ROW leading up to the PC's.
- Fort Bend County Construction Group will be on-site to coordinate with the property owners as the staking will take place within the fenced areas.

MBCO ASSUMPTIONS:

- This proposal is based solely and exclusively on the best interpretation of the scope as provided by RPS and as shown on Exhibits "A". Any changes to the project location, area, or scope will significantly impact costs and fees and will require a new cost proposal.
- MBCO cannot control the weather and cannot be held responsible for delays in schedule due to inclement weather.



DELIVERABLES:

- Survey stake out report.
- Point File in the standard ASCII (P,N,E,Z,D) format.

SCHEDULE:

MBCO will complete the above-described scope of services based on an agreed upon schedule between MBCO, RPS, and FBC Construction Group.

COMPENSATION:

Julia Ave survey \$ 3,665.00

The above-mentioned Surveying Services is a Lump Sum Fee, which will be billed at project completion or percent completion at the end of every month for the duration of the project, to be paid in full within 30 days of invoice date.

This cost proposal is valid for 30 days from the date of the proposal and may be re-evaluated after such time to account for any changes with the project scope, environmental factors and/or the general rate schedule. If this proposal is acceptable, please sign and return a copy. If you have any questions, you may reach me at Marion.Clark@mbcoengineering.com.

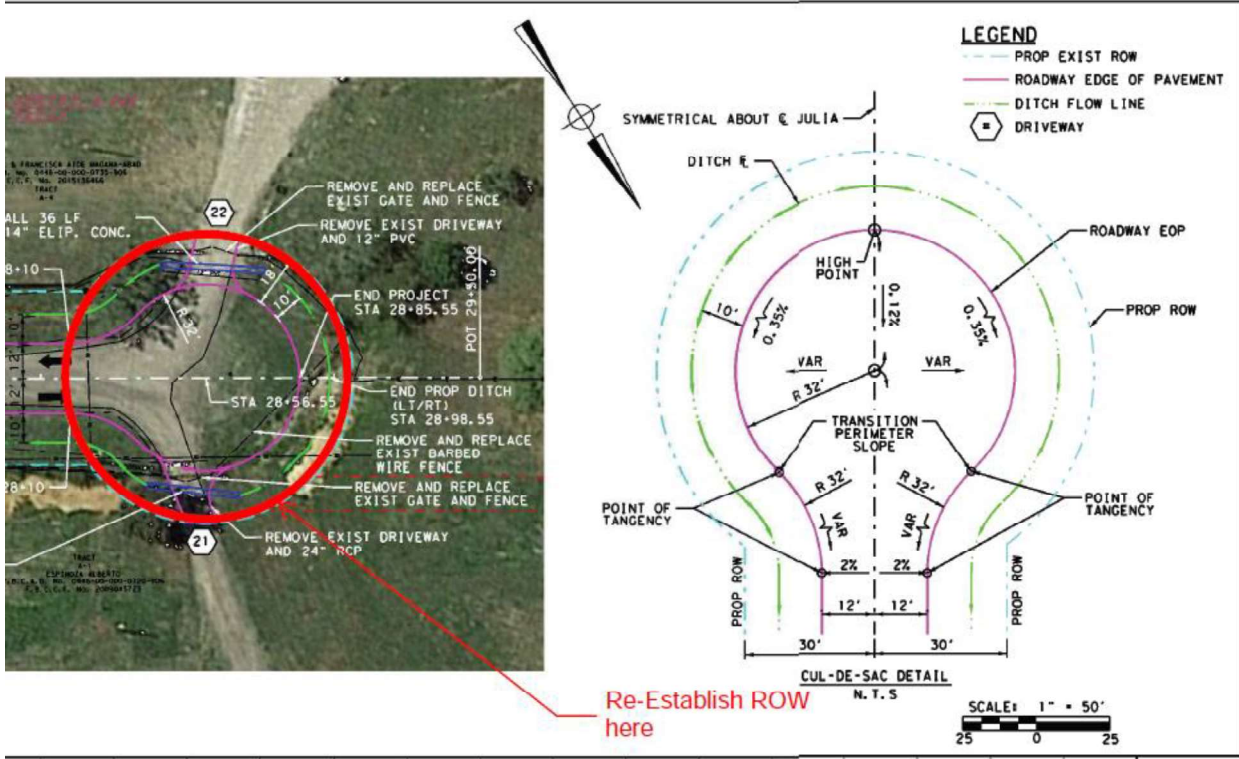
Thank you for the opportunity and we appreciate doing business with you.

Sincerely,



Marion Clark, RPLS
Vice President, Survey

EXHIBIT "A" PROJECT



GENERAL TERMS AND CONDITIONS

1. **Access To Site** - Unless otherwise stated, MBCO will have access to the site for activities necessary for the performance of the services. MBCO will take all commercially reasonable precautions to minimize damage due to these activities but has not included in the fee the cost of restoration of any resulting damage.

2. **Ownership Of Documents** - Client acknowledges that all original papers, documents, maps, surveys, digital data and other work product and copies thereof, whether produced by MBCO (collectively, the "MBCO IP") shall remain the property of MBCO, except documents which are to be filed with public agencies. MBCO grants to Client a non-exclusive license to use the MBCO IP solely for the business relationship between MBCO and Client. Client further acknowledges that Client's right to utilize the MBCO IP pursuant to this agreement will continue only so long as Client is not in default pursuant to the terms and conditions of this Agreement and Client has performed all obligations under this Agreement.

3. **Copyright** - The parties agree that all protections of the United States and Texas copyright laws shall be applicable to the MBCO IP to the benefit of MBCO, including common law and statutory law, whether or not any copyright for such work product actually is registered, and without regard to whether or not such copyright actually applies to such work product.

4. **Invoices** - Invoices for fees and all other charges will be submitted monthly for all services rendered as the work progresses, and the net amount shall be due and payable as of the date of the invoice (the "Due Date") at MBCO's office in Houston, Harris County, Texas. Any sums not paid by the Due Date shall bear interest at the highest rate allowed by law (measured on a per diem basis) until paid in full. In the event Client pays by check and such check is returned for non-sufficient funds, Client shall be liable for all costs and expenses related therefrom incurred by MBCO. In addition to the foregoing, in the event MBCO engages legal counsel to collect any sums due and owing by Client, Client shall be liable for all reasonable attorney's fees and all other costs and expenses incurred by MBCO in relation to such collection efforts

5. **Default** - Should Client (i) fail to perform, observe or keep any of its obligations under this Agreement, any agreed upon proposal(s) or any other document or instrument entered into by and between the Client and MBCO; (ii) fail to pay when due the full amount of any sums owed to MBCO; (iii) become insolvent, have a petition in bankruptcy filed by or against it prior to full payment to MBCO or (iv) violate any of the terms of this Agreement, any agreed upon proposal(s) or any other document or instrument entered into by and between the Client and MBCO, MBCO may at its option do any one or more of the following: (i) terminate this Agreement and retain all sums paid to MBCO, not as a penalty, but as the agreed upon liquidated damages for such default; (ii) declare all unpaid amounts owed immediately due and payable without further notice or demand and will thereafter bear interest at the highest rate allowed by law (measured on a per diem basis) until paid; and/or (iii) pursue any other remedies available at law or equity. Client hereby expressly agrees that Client shall be responsible for all costs incurred or sums advanced (including, without limitation, reasonable attorney's fees and associated costs) in relation to any remedy utilized.

6. **Client's obligation to pay** - Client's obligation to pay is solely that of Client, and the acts or omissions of any third party shall not affect that obligation. All sums due and not received by the Due Date shall be construed as past due. To cover the costs of collection, all past-due amounts will bear interest at one and one half percent (1.5%) or the highest rate allowed by law (measured on a per diem basis) or until paid in full. The Client shall pay any attorney's fees or court costs incurred in collecting any past-due amount. In the event that Client fails to pay MBCO within thirty (30) days after invoices are rendered, then Client agrees that MBCO shall have the right to stop or suspend work and consider the non-payment as grounds for a total breach of this Agreement.

7. **Termination Of Services** - This Agreement may be terminated by either party upon five (5) days' written notice, by mutual consent or in the event of persistent failures of performance of material terms and conditions of this Agreement by the other party through no fault of the terminating party. MBCO shall then be paid for the services completed up to the time of the termination date based upon the attached Rate Schedule.

8. **Dispute Resolution** - Claims or disputes in connection with the services provided under this agreement between Client and MBCO shall be submitted to non-binding mediation. Client and MBCO agree to include a similar mediation agreement with all contractors, subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.

9. **Governing Law** - This Agreement shall be construed and enforced in accordance with the laws of Texas.

10. **Indemnification** - EACH PARTY (THE "INDEMNIFYING PARTY") HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY, WHICH SHALL INCLUDE, WITHOUT LIMITATION, SUCH PARTY'S OWNERS, OFFICERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, AGENTS AND AFFILIATES (THE "INDEMNIFIED PARTY") FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LIABILITIES, COSTS, EXPENSES, AND/OR DAMAGES TO PERSON OR PROPERTY ASSERTED AGAINST, IMPOSED UPON OR INCURRED BY THE INDEMNIFIED PARTY TO THE EXTENT ARISING FROM, IN CONNECTION WITH OR ON ACCOUNT OF ANY ACT OR OMISSION OF THE INDEMNIFYING PARTY IN RELATION TO THE PERFORMANCE OR LACK OF PERFORMANCE OF THE INDEMNIFYING PARTY OR ANY PARTY UNDER THE INDEMNIFYING PARTY'S REASONABLE CONTROL. THE INDEMNIFYING PARTY FURTHER AGREES TO PAY THE INDEMNIFIED PARTY'S COURT COSTS, REASONABLE ATTORNEYS' FEES INCURRED AND ALL OTHER ASSOCIATED COSTS ARISING FROM ANY SUCH CLAIMS, INCLUDING, BUT NOT LIMITED TO, ALL COSTS INCURRED IN ESTABLISHING THE APPLICABILITY OF THIS PARAGRAPH. THIS INDEMNITY SHALL APPLY WITHOUT REGARD TO WHETHER THE CLAIM, DEMAND, ACTION, LIABILITY, COST, EXPENSE, OR DAMAGE IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT. THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THE AGREEMENT.

11. **Limitation Of Liability** - Client acknowledges and agrees that under no circumstances shall MBCO be liable in any manner for delay or deficiency in any performance on any matter caused in whole or in part by acts or omissions of third parties, delays, failures to perform, or any delays due to fire, flood, water, the elements, labor disputes, shortages of labor or materials, explosions, civil disturbances, governmental actions, unavailability of transportation, or any other cause beyond MBCO's reasonable control. BECAUSE IT IS EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES, IF ANY, WHICH MAY RESULT FROM ANY FAILURE ON THE PART OF MBCO TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER AND BECAUSE CLIENT DOES NOT DESIRE THE AGREEMENT OR THESE TERMS AND CONDITIONS TO PROVIDE FOR FULL LIABILITY OF MBCO, CLIENT AGREES THAT MBCO SHALL BE EXEMPT FROM ANY AND

ALL LIABILITY FOR ANY LOSS, DAMAGE AND/OR INJURY DUE TO A FAILURE OF THE WORK AND/OR MATERIALS IN ANY RESPECT THAT IS NOT WITHIN THE REASONABLE CONTROL OF MBCO. CLIENT FURTHER ACKNOWLEDGES AND AGREES THAT MBCO SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH THE WORK, THE MATERIALS OR ANY MATTER RELATED THERETO. IN ANY EVENT MBCO IS FOUND LIABLE FOR LOSS, DAMAGE, AND/OR INJURY DUE TO A FAILURE OF THE SERVICES IN ANY RESPECT, MBCO'S LIABILITY SHALL BE NO GREATER THAN A SUM EQUAL TO THE AMOUNT PAID BY CLIENT TO MBCO, AS THE AGREED UPON DAMAGES, NOT AS A PENALTY, BUT AS THE EXCLUSIVE REMEDY, AND THAT THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF WHETHER SUCH DAMAGE, INJURY AND/OR LOSS WAS DUE DIRECTLY OR INDIRECTLY FROM THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF MBCO OR ANY PARTY UNDER ITS REASONABLE CONTROL OR ARISING OUT OF STRICT LIABILITY IN TORT, BREACH OF CONTRACT, BREACH OF WARRANTY OR OTHERWISE. CLIENT FURTHER ACKNOWLEDGES AND AGREES THAT THE INCLUSION OF THIS PARAGRAPH WAS A MATERIAL CONSIDERATION FOR MBCO TO ENTER INTO THE AGREEMENT.

12. **No Warranties** - AS TO THE SERVICES PROVIDED, MBCO SHALL USE ALL COMMERCIALY REASONABLE EFFORTS TO ENSURE THE SERVICES ARE SUBSTANTIALLY CORRECT. HOWEVER, MBCO MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES AND DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF QUALITY AND/OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. MBCO DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND CLIENT MAY NOT RELY ON ANY STATEMENT OF WARRANTY. CLIENT HEREBY EXPRESSLY ACKNOWLEDGES THAT CLIENT IS NOT RELYING ON THE STATEMENTS, REPRESENTATIONS OR ACTIONS OF ANY EMPLOYEE, REPRESENTATIVE, AGENT OR CONTRACTOR OF MBCO IN ANY WAY. THIS SECTION SHALL SURVIVE THE COMPLETION, EXPIRATION OR TERMINATION OF THIS AGREEMENT.

13. **Authority** - Client affirmatively represents and states that he/she is authorized to enter into this Agreement, either as the owner or an officer of (Company Name), or as Company's duly authorized agent, trustee, or receiver for the purpose of entering into this Agreement.

14. **Professional Services** - All surveying services are regulated under the Texas Board of Professional Engineers and Land Surveyors. The Board can be contacted at 1917 S. Interstate 35, Austin, Texas 78741.

15. **Use of Work Product** - MBCO acknowledges that Client is requesting services to be performed under the applicable agreed upon proposal(s) for the purpose of providing such information to other parties including, but not limited to, clients, customers, governmental entities and other interested parties. Client agrees that the work product prepared by MBCO may not be altered in any way except for the addition of page numbers or exhibit captions necessary to incorporate that work product into other documents. MBCO agrees to provide copies of the work product mutually agreed upon by both parties described in the proposal hereof.

16. **No Accord and Satisfaction** - The parties hereto expressly agree that no payment made by Client or on behalf of Client of a lesser amount than the required amount shall be deemed an accord and satisfaction, regardless of any statement on any check or accompanying letter to the contrary, and MBCO is hereby authorized to accept such payment(s) without prejudice to its rights to recover any balance due

17. **Entire Agreement; Amendments and Waivers; Successors and Assigns** - The Agreement (and the proposal to which this is attached) constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. The failure of either Party to this Agreement to enforce any of its terms, provisions or covenants shall not be construed as a waiver of the same or of the right of such Party to enforce the same. Waiver by either Party hereto of any breach or default by any other Party of any term or provision of this Agreement shall not operate as a waiver of any other breach or default. The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties. Notwithstanding the foregoing, the Client may not assign any part of this Agreement without the express written consent of MBCO.

18. **Severability; Survival** - Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision (or any section of any provision) of this Agreement is held to be prohibited by or invalid under applicable law, such provision (or any section of any provision) shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Agreement. The parties expressly agree that the indemnities, covenants and agreements contained in this Agreement shall survive the completion, expiration or termination of this Agreement.

19. **Contract Negotiation** - Client shall bear all MBCO's costs and expenses (including legal costs) in the event Client wishes to negotiate any proposal(s), this Agreement or any other document or instrument entered into by and between the Client and MBCO, or any part thereof.

20. **Conflicting Terms** - In the event of any conflict between the terms and conditions set forth in this Agreement and any other terms and conditions set forth in any proposal(s) or any other document or instrument entered into by and between the Client and MBCO, the terms and conditions set forth in this Agreement shall control for all intent and purposes.

MBCO Engineering, LLC (MBCO)

RPS North America

Signature _____

Signature _____

Date _____

Date _____

Printed Name _____

Printed Name _____

Title _____

Title _____