

3

WHEREAS, Section 262.011 (d) of the Texas Local Government Code authorizes the County Purchasing Agent to make purchases that are not subject to competitive solicitation.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties do mutually agree as follows:

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
2. **Scope of Services.** Engineer shall render services to District as provided in Engineer's Proposal dated October 31, 2024 attached hereto as "Exhibit A" and incorporated herein by reference (the "Services").
3. **Time for Performance.** Time for performance for the Services provided under this Agreement shall begin with Engineer's receipt of Notice to Proceed and shall end no later than July 31, 2027. Engineer shall complete such tasks described in the Scope of Services, within this time or within such additional time as may be extended by District.
4. **Compensation and Payment Terms.**

Engineer's fees for the Services shall be calculated at the rate(s) set forth in Exhibit "A" attached hereto. The Maximum Compensation to Engineer for the Services performed under this Agreement is Three Hundred Eight Thousand Nine Hundred Twenty-Nine and 00/100 Dollars (\$308,929.00). In no event shall the amount paid by District to Engineer under this Agreement exceed said Maximum Compensation without an approved change order.

- (a) Engineer understands and agrees that the Maximum Compensation stated is an all-inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated in the attached Exhibit "A."
- (b) District will pay Engineer based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Engineer shall submit to District staff person designated by the District, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to District. Engineer shall submit invoices no more frequently than on a monthly basis. District shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. District shall pay each such approved invoice within thirty (30) calendar days.
- (c) Accrual and payment of interest on any overdue payments assessed by Engineer, if any, shall be governed by Chapter 2251 of the Texas Government Code.

- (d) Engineer understands and agrees that District's obligation to make any payment(s) hereunder is dependent upon Engineer's completion of the Services in a timely, good, and professional manner and in accordance with the performance representations made in Section 25 of this Agreement. Therefore, District reserves the right to withhold payment pending verification of satisfactory work performed.
5. **Limit of Appropriation.** Engineer understands and agrees that the Maximum Compensation for the performance of the Services within the Scope of Services described in Section 2 above is \$308,929.00. In no event shall the amount paid by District under this Agreement exceed the Maximum Compensation without a District approved change order. Engineer 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 \$308,929.00 specifically allocated to fully discharge any and all liabilities District may incur under this Agreement. Engineer does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total Maximum Compensation that Engineer may become entitled to and the total maximum sum that District may become liable to pay Engineer under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed \$308,929.00.
6. **Non-appropriation.** Engineer understands and agrees that in the event no funds or insufficient funds are appropriated by the District under this Agreement, District shall immediately notify Engineer in writing of such occurrence and the Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were received or made without penalty, liability or expense to the District. In no event shall said termination of this Agreement or District's failure to appropriate said funds be deemed a breach or default of this Agreement or create a debt by District in any amount(s) in excess of those previously funded.
7. **Taxes.** Engineer understands and agrees that District is a governmental entity and political subdivision of the state of Texas, and as such, is exempt from payment of any sales and use taxes. District shall furnish evidence of its tax-exempt status upon written request by Engineer.
8. **Insurance.** Prior to commencement of the Services, Engineer 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. Engineer shall provide certified copies of insurance endorsements and/or policies if requested by District. Engineer 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. Engineer shall obtain such insurance written on an Occurrence form 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:

- (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
- (b) 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.
- (c) 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.
- (d) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- (e) Professional Liability insurance with limits not less than \$1,000,000.

District and members of the Fort Bend County Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Engineer shall contain a waiver of subrogation in favor of District.

If required coverage is written on a claims-made basis, Engineer warrants that any retroactive date applicable to coverage under the policy precedes the Effective Date of this Agreement 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 the work under this Agreement is completed.

Engineer shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by District.

No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to District.

Approval of the insurance by District shall not relieve or decrease the liability of the Engineer.

9. **Indemnity.** PURSUANT TO SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS DISTRICT, ITS OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY, AND COSTS, INCLUDING THE REIMBURSEMENT OF REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ENGINEER OR ENGINEER'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL. IN ADDITION, ENGINEER SHALL FURTHER PROCURE AND MAINTAIN LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 8 OF THIS AGREEMENT.

ENGINEER SHALL TIMELY REPORT TO DISTRICT ALL SUCH MATTERS ARISING UNDER THE INDEMNITY PROVISIONS ABOVE. UPON THE RECEIPT OF ANY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN, OR JUDGMENT, AND NO LATER THAN THE FIFTEENTH DAY OF EACH MONTH, ENGINEER SHALL PROVIDE DISTRICT WITH A WRITTEN REPORT ON EACH 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 ENGINEER IN THE DEFENSE OF EACH MATTER. 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 RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ENGINEER, OR ITS AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL, ENGINEER SHALL, NEVERTHELESS, 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 SAID ACTS AND/OR OMISSIONS OF ENGINEER ARE NOT AT ISSUE IN THE MATTER.

THE INDEMNITY PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT HOWEVER CAUSED, AND NO PAYMENT, PARTIAL PAYMENT, OR ISSUANCE OF CERTIFICATION OF COMPLETION OF THE SERVICES UNDER THIS AGREEMENT BY DISTRICT, WHETHER IN WHOLE OR IN WHOLE OR IN PART, SHALL WAIVE OR RELEASE ANY OF THE PROVISIONS OF THIS SECTION.

10. **Public Information Act.** Engineer expressly acknowledges and agrees that District is a public entity and as such, is subject to the provisions of the Texas Public Information Act under Chapter 552 of the Texas Government Code. In no event shall District be liable to Engineer for release of information pursuant to Chapter 552 of the Texas Government Code or any other provision of law. Except to the extent required by law or as directed by the Texas Attorney General, District agrees to maintain the confidentiality of information provided by Engineer expressly marked as proprietary or confidential.

District shall not be liable to Engineer for any disclosure of any proprietary or confidential information if such information is disclosed under Texas law or at the direction of the Texas Attorney General. Engineer further acknowledges and agrees that the terms and conditions of this Agreement are not proprietary or confidential information.

11. **Compliance with Laws.** Engineer shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, and the 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. Engineer, in providing all services hereunder, further agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
12. **Independent Contractor.** In the performance of work or services hereunder, Engineer shall be deemed an independent Contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Engineer. Engineer 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.
13. **Use of Customer Name.** Engineer may use District's name without District's prior written consent only in Engineer's customer lists. Any other use of District's name by Engineer must have the prior written consent of District.
14. **District/District Data.** Nothing in this Agreement shall be construed to waive the requirements of Section 205.009 of the Texas Local Government Code.
15. **Personnel.** Engineer represents that it presently has, or is able to obtain adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Engineer shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of District, to perform the Services when and as required and without delays.

All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee or agent of Engineer who, in District's opinion, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement, shall, upon request of District, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at District's facilities, Engineer shall comply with, and will require that all Engineer's Personnel comply with, all applicable rules, regulations and known policies of District that are communicated to Engineer in writing, including security procedures concerning systems and data and remote access thereto, building security

procedures, including the restriction of access by District to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

16. **Confidential and Proprietary Information.** Engineer 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 Engineer 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 Engineer 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 Engineer) publicly known or is contained in a publicly available document; (b) is rightfully in Engineer'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 Engineer who can be shown to have had no access to the Confidential Information.

Engineer agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Engineer 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, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Engineer 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, Engineer shall advise District immediately in the event Engineer 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 Engineer will at its expense cooperate with District in seeking injunctive or other equitable relief in the name of District or Engineer against any such person. Engineer agrees that, except as directed by District, Engineer 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, Engineer will promptly turn over to District all documents, papers, and other matters in Engineer's possession which embody Confidential Information.

Engineer 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. Engineer 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.

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

17. **Ownership and Reuse of Documents.** All work product and data produced or developed under this Agreement by Engineer including any documents, data, notes, reports, research, graphic presentation materials, and any other related material (collectively, "Materials"), shall at all times be the property of District. District, at all times, shall have a right of access to the Materials. Engineer shall promptly furnish and deliver all such Materials to District on request. Notwithstanding the foregoing, Engineer shall bear no liability or responsibility for Materials that have been modified post-delivery to District or used by District for a purpose other than that for which they were prepared under this Agreement.
18. **Inspection of Books and Records.** Engineer shall permit District, or any duly authorized agent of District, to inspect and examine the books, records, information, and documentation (collectively, "Records") of Engineer which relate to the Services provided under this Agreement for the purposes of making audits, examinations, excerpts, copies, and transcriptions. Engineer shall maintain all such Records in a readily available state and location, reasonably accessible to District or their authorized representatives. District's right to inspect such books and records shall survive the termination of this Agreement for a period of four (4) years, or until any litigation concerning any of the Services has been satisfactorily resolved, whichever occurs later. **ENGINEER SHALL NOT DESTROY OR DISCARD ANY RECORDS REASONABLY RELATED TO THIS AGREEMENT OR THE SERVICES, UNLESS THE TIME PERIOD FOR MAINTAINING THE SAME HAS EXPIRED.**
19. **Termination.**
 - (a) Without Cause. District, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, without cause, upon thirty (30) days prior written notice to Engineer.
 - (b) With Cause. District, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, with cause, for any of the following reasons, each of which shall constitute a material breach and "Default" of the Agreement:
 - (1) Engineer fails to perform any portion of the Scope of Services within the timeframe(s) provided under this Agreement.

- (2) Engineer fails to comply with District's documentation and reporting requirements, terms and requirements of this Agreement, or applicable federal, state, or local laws and regulations.
 - (3) Non-performance and suspension of the Agreement by Engineer that exceeds thirty (30) calendar days due to Force Majeure.
 - (4) Engineer fails to perform any obligation under this Agreement or as required by law, ordinance, or regulation and such failure creates an imminent threat to the public health and/or safety.
 - (5) Engineer otherwise 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.
 - (6) District shall notify Engineer in writing of the alleged Default in reasonable detail ("Notice"). Upon receipt of said Notice, Engineer shall have opportunity to cure such Default within the time specified in the Notice by District. If Engineer fails to cure such Default within such time, and to the reasonable satisfaction of District, then District may elect to terminate this Agreement for cause.
 - (7) If, after termination of the Agreement by District for cause, it is determined for any reason whatsoever that Engineer was not in Default, or that the Default was excusable, the rights and obligations of the Parties hereunder shall be the same as if the termination had been issued by District without cause in accordance with this Agreement.
- (c) Upon termination of this Agreement for any reason, Engineer shall cease all work and activity for the Services by the date specified by District and shall not incur any new obligations or perform any additional services for the work performed hereunder beyond the specified date. District shall compensate Engineer in accordance with Section 4, above, for such work provided by Engineer under this Agreement prior to its termination and which has not been previously presented for payment by Engineer to District.
- (d) 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 Engineer.

20. **Force Majeure.** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, then, within a reasonable time after the occurrence of such event, but no later than ten (10) calendar days after, the Party whose obligations are so affected (the "Affected Party") thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party's obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, Force Majeure includes, but is not limited to: acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority other than a Party to this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, severe storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other incapacities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

21. **Assignment.** Engineer shall not assign this Agreement to another party without the prior written consent of District, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported or attempted assignment or transfer in violation of this Section shall be null and void.
22. **Successors and Assigns Bound.** District and Engineer each bind themselves and their successors and assigns to the other Party and to the successors and assigns of such other Party, with respect to all covenants of this Agreement.
23. **Publicity.** Contact with citizens of Fort Bend County, media outlets, or other governmental agencies shall be the sole responsibility of District. Under no circumstances, whatsoever, shall Engineer release any material or information developed or received during the performance of Services hereunder unless Engineer obtains the express written approval of District or is required to do so by law.

24. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, or personally delivered to the following addresses:

If to District: Fort Bend County Drainage District
Attn: Chief Engineer
301 Jackson Street
Richmond, Texas 77469

And

Fort Bend County, Texas
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

If to Engineer: **Diaz Engineering, LLC**
Attn: _____
4422 Matagorda Lakes Dr.
Humble, Texas 77396

Within five (5) business days of the Effective Date of this Agreement, each Party to this Agreement shall designate in writing to the other Party one person and one alternate person to be that Party's designated spokesperson for communications between the Parties.

25. **Standard of Care.** Pursuant to Section 271.904 of the Texas Local Government Code, Engineer represents to District that Engineer has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession ("Professionals") practicing in the greater Houston metropolitan area. Engineer shall provide the Services to District with the same professional skill and care ordinarily provided by such Professionals under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional.
26. **Travel Policy.** Mutually approved travel and mileage expenses incurred in the performance of the Services hereunder will be reimbursed to Engineer only to the extent that those costs do not exceed Fort Bend County travel reimbursement allowances. A copy of District's Travel Policy with those reimbursement limits shall be provided to Engineer upon request.

27. **Arbitration, Litigation Waiver, and Attorney Fees.** District does not agree to submit disputes arising out of this Agreement to binding arbitration nor does District agree to pay any and/or all attorney fees incurred by Engineer in any way associated with this Agreement. Therefore, any references in Engineer's Proposal to binding arbitration, waiver of a right to litigate a dispute, or payment of attorney fees are hereby deleted.
28. **No Waiver of Jury Trial.** District does not agree that all disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Therefore, any references in Engineer's Proposal to District's waiver of jury trial are hereby deleted.
29. **Limitations.** Limitations for the right to bring an action, regardless of form, shall be governed by the applicable laws of the State of Texas, and any provisions to the contrary in Engineer's Proposal are hereby deleted.
30. **Indemnification by District. ENGINEER UNDERSTANDS AND AGREES THAT UNDER THE TEXAS CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, DISTRICT CANNOT ENTER INTO AN AGREEMENT WHEREBY DISTRICT AGREES TO INDEMNIFY OR HOLD HARMLESS ANOTHER PARTY. THEREFORE, ANY AND ALL REFERENCES IN ENGINEER'S PROPOSAL TO DISTRICT DEFENDING, INDEMNIFYING, OR HOLDING OR SAVING HARMLESS ENGINEER OR ANY OTHER PARTY, FOR ANY REASON WHATSOEVER, ARE HEREBY DELETED.**
31. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect. **IT IS ACKNOWLEDGED BY ENGINEER THAT NO OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF DISTRICT HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT OR ANY ATTACHED EXHIBITS HERETO UNLESS EXPRESSLY AUTHORIZED BY THE FORT BEND COUNTY COMMISSIONERS COURT.**
32. **Conflict.** In the event there is a conflict among the terms of this document entitled "Agreement for Professional Engineering Services" and the terms of Engineer's Proposal or any other exhibit attached hereto, the terms of this document shall prevail with regard to the conflict.
33. **Understanding Fair Construction.** By execution of this Agreement, the Parties acknowledge that they have read and understood each provision, term, and obligation contained herein. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting Party than the non-drafting Party.

34. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
35. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver or surrender by District of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
36. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
37. **Certain State Law Requirements for Contracts** The contents of this Section are required by Texas law and are included by District regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Engineer hereby verifies that Engineer and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
- (a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, Engineer is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
 - (b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Engineer does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
 - (c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Engineer does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
 - (d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Engineer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts.

“Discriminate against a firearm entity or firearm trade association” has the meaning provided in § 2274.001(3) of the Texas Government Code. “Firearm entity” and “firearm trade association” have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

38. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, ENGINEER ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO DISTRICT FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
39. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
40. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
41. **Certification.** By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.

{Execution Page Follows}

IN WITNESS WHEREOF, and intending to be legally bound, District and Engineer hereto have executed this Agreement to be effective on the date signed by the last Party hereto.

FORT BEND COUNTY DRAINAGE DISTRICT

DIAZ ENGINEERING, LLC

K.P. George, County Judge



Authorized Agent – Signature

Date

Imelda Diaz, PE

Authorized Agent- Printed Name

ATTEST:

Principal

Title

Laura Richard, County Clerk

5/1/2025

Date

APPROVED:



Mark Vogler, Chief Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of the Fort Bend County Drainage District within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

I:\agreements\2025 agreements\drainage district\diaz engineering (25-drng-100574)\professional services agmt - diaz.docx.knm

EXHIBIT A

(Engineer's Proposal Follows Behind)



September 19, 2024
(Revised October 31, 2024)

Mark Vogler, P.E.
Chief Engineer
Fort Bend County Drainage District
301 Jackson St
Richmond, TX 77469

Subject: Fresno-Arcola Drainage Improvements Feasibility Study
Fort Bend County Drainage District, Precinct 1

Dear Mr. Vogler:

We are pleased to submit this proposal to the Fort Bend County Drainage District for a flood mitigation feasibility analysis covering approximately 5.5 square miles in the Fresno-Arcola area, within the Mustang and Middle Oyster Creek watersheds in Fort Bend County Precinct 1.

The objective of this study is to evaluate existing drainage patterns and develop flood mitigation strategies within the Fresno-Arcola area, specifically targeting areas east and west of FM 521 and extending south of State Highway 6 to S. Pine St. Using a phased approach, Diaz will conduct a comprehensive assessment of drainage patterns and review both ongoing and potential drainage and detention improvements associated with the *Mustang Creek Alternative Analysis* Project. The goal is to design and propose supplemental infrastructure improvements—including roadside ditch enhancements, channel improvements, and detention solutions—that can be integrated with the Mustang Creek system. Together, these improvements are intended to create a cohesive, robust drainage solution that enhances flood protection and drainage efficiency across the study area.

To meet these objectives, Diaz proposes a phased approach, with each phase designed to build upon the previous one. Our scope of work includes performing hydrologic and hydraulic (H&H) modeling and analyzing various conceptual alternatives, such as stormwater detention, channel improvements, subdivision storm sewer drainage enhancements, roadside ditch improvements, and non-structural measures. Based on these analyses, we will evaluate the costs and benefits of each alternative and provide recommendations in a feasibility report.

Scope of Work Phasing:

- **Phase 1: Initial Drainage Pattern Analysis**
Develop a report and exhibit documenting existing road ditch drainage patterns west of FM 521 and east to the County line, including south of State Highway 6 (N. Pine St., Coen Rd., and S. Pine St.). This phase will leverage 2014, 2019, and 2024 LiDAR data, supplemented by site visits during rain events to verify flow path breakpoints, and road ditch profiles from the Fort Bend County Road and Bridge Department.
- **Phase 2: Mustang Creek Review and Solution Brainstorming**
Using Phase 1 findings, Diaz will review ongoing Mustang Creek drainage and detention projects west of FM 521 and brainstorm preliminary drainage solutions to enhance local street drainage. For areas east of FM 521, we will identify potential drainage channels and/or detention sites that would benefit local drainage.

- **Phase 3: Drainage Calculations and Hydraulic Modeling**
Perform calculations for channel and storm sewer sizing to convey road ditch flows west of FM 521 toward Mustang Creek or a regional detention pond. For areas east of FM 521, hydraulic modeling will be conducted to ensure sufficient detention storage and mitigate downstream impacts along major drainage channels and ditches.
- **Phase 4: Location and Cost Assessment of Drainage Improvements**
Identify optimal locations for proposed drainage channels and detention ponds east of FM 521, estimate right-of-way acquisition costs, and provide preliminary construction cost estimates for these drainage improvements.

Diaz will deliver these services, including data collection, detailed H&H modeling, and the feasibility study report, in accordance with the specific tasks outlined in Appendix A, "General Scope of Basic Services." We anticipate completing all project submittals within 10 months of receiving the notice to proceed.

The proposed cost for the scope of services outlined in this proposal is a not-to-exceed amount of \$308,929. A summary of the fee breakdown by phase is as follows (for more detail, please refer to Appendix B):

Phase	Cost	Duration
Project Management	\$25,308	10 months
Phase 1: Initial Drainage Pattern Analysis	\$36,231	2 months
Phase 2: Mustang Creek Review & Solutions Brainstorming	\$30,290	2 months
Phase 3: H&H Modeling & Calculations	\$144,419	3 months
Phase 4: Right-of-Way & Cost Assessment of Drainage Improvements	\$28,048	2 months
Drainage Feasibility Study Report	\$14,633	1 month
Total Basic Services	\$278,929	10 months
Additional Services (Placeholder Amounts Only, authorized as required)	\$30,000	as needed
Total Additional Services	\$30,000	
Total Engineering Services	\$308,929	

Diaz Engineering appreciates the opportunity to present this proposal to the Fort Bend County Drainage District. Should you need additional information, please feel free to contact me at 281-714-9475 or at ldiaz@diazengineering.com.

Respectfully,



Imelda Diaz, PE
Principal

Attachments: Appendix A – General Scope of Basic Services
Appendix B – Level of Effort (LOE) Estimate for Engineering Services

APPENDIX A

GENERAL SCOPE OF BASIC SERVICES

BASIC SERVICES

A. Project Management and Coordination

1. **Project Management:** The Engineer shall perform all necessary project management and administrative services to ensure the project is completed on time and within budget. This includes submitting monthly invoices with comprehensive progress reports, preparing and maintaining a detailed project schedule in Microsoft Project format, and overseeing sub-consultants.
2. **Project Status Reports & Invoicing:** Based on an estimated 10-month schedule, the Engineer shall provide monthly project status updates and documentation of progress, alongside processing monthly invoices. The project schedule will be updated as needed to reflect current project conditions.
3. **Progress Meetings:**
 - **Kickoff and Coordination Meetings:** The Engineer will attend a project kickoff meeting and up to eight monthly status meetings with Fort Bend County Drainage District (FBCDD) representatives. These meetings will be conducted via video/teleconference, during which the Engineer will present updates, discuss project issues, and provide progress documentation.
 - **Meeting Agendas and Minutes:** Agendas will be prepared for each meeting, and meeting minutes will be distributed via email within five days to document decisions, next steps, and action items.

B. Phase 1: Initial Drainage Pattern Analysis

1. **Data Collection and Review:** The Engineer shall collect and review all relevant information and data, including historical flooding data, previous drainage studies, and adjacent ongoing or planned projects. Fort Bend County Drainage District (FBCDD) will provide GIS databases, HEC-HMS and HEC-RAS models, and any other available documents related to the Mustang Creek watershed.
2. **Field Reconnaissance and Site Visits:** The Engineer will perform up to two field visits to document the existing drainage systems, outfalls, and flow patterns. Geo-referenced

photographs and notes will be taken to familiarize the project team with current site conditions.

3. **LiDAR Evaluation and Analysis:** The Engineer will evaluate LiDAR datasets from 2014, 2019, and 2024 to identify topographic changes within the project area. Differences between surfaces will be documented, and site data will be incorporated into the model development.
4. **Base Map and Exhibit Production:** Initial base maps summarizing data, such as floodplains, LiDAR topography, channels, and key drainage features, will be produced. An exhibit and technical memo report detailing existing roadside ditch drainage patterns west of FM 521 and extending to the County line south of State Highway 6 will be submitted.

C. Phase 2: Mustang Creek Review and Solution Brainstorming

1. **Mustang Creek Data Collection:** The Engineer will review relevant data for ongoing Mustang Creek drainage and detention projects, including project plans, hydrologic and hydraulic models, and related documents provided by FBCDD.
2. **Preliminary Drainage Solutions Identification:** The Engineer will brainstorm alternatives based on Phase 1 findings to address street drainage issues west of FM 521 and identify potential channel and/or detention sites east of FM 521. Preliminary solutions will aim to enhance local drainage and reduce flood impacts.

D. Phase 3: Hydrology and Hydraulic (H&H) Modeling and Calculations

1. **Baseline (Existing) Conditions Model Development:** The Engineer will review and modify existing HEC-HMS and HEC-RAS models for Mustang Creek to capture necessary details within the project limits. Consideration will be given to recent land cover changes, break lines, refinement regions, and significant infrastructure updates.
 - **Hydrologic Modeling with HEC-HMS:** Using approved methodologies, the Engineer will model current hydrologic conditions based on Atlas 14 rainfall data for the 10-, 25-, and 100-year events.
 - **Hydraulic Modeling with HEC-RAS:** The Engineer will execute 1D steady and 2D Rain-on-Grid (ROG) models to reflect current drainage conditions accurately. Model outputs will include water surface elevations, flood profiles, and floodplain extents for 10-, 100-, and 500-year events.

- Level of Service (LOS) Evaluation: The Engineer will evaluate the LOS for key channels within the study area and identify areas where the LOS does not meet project objectives.
- Existing Conditions Technical Memo Report: The Engineer will prepare a memo summarizing findings, LOS evaluations, and problem areas identified in the existing conditions analysis.

2. Proposed Conditions Modeling and Alternatives Analysis:

- Development of Alternatives: The Engineer will identify and evaluate feasible flood mitigation alternatives, including channel capacity enhancements, detention storage, storm sewer improvements, and other drainage infrastructure upgrades.
- Analysis of Alternatives: Various configurations will be assessed to determine the optimal combination of improvements to achieve a minimum 10-year LOS.
- Proposed Conditions Memo Report: A report will be prepared to document the evaluated alternatives, their impact on LOS, and the recommended options for the most effective flood mitigation.

E. Phase 4: Right-of-Way and Cost Assessment of Drainage Improvements

1. Site Identification and Right-of-Way Evaluation: The Engineer will identify optimal sites for drainage channels and detention ponds east of FM 521. Preliminary right-of-way acquisition needs and associated costs will be estimated.
2. Preliminary Environmental and Utility Assessments: A desktop environmental review and utility relocation assessment will be conducted for the proposed drainage improvements to identify potential impacts and constraints.
3. Cost Estimates and Benefit-Cost Analysis: The Engineer will develop planning-level cost estimates for each proposed alternative, considering construction, environmental mitigation, utility relocations, and long-term maintenance.
4. Drainage Feasibility Study Report:
 - Draft Report: A draft report will compile findings from all phases, including maps, tables, and model outputs. The report will be signed and sealed by a Licensed Professional Engineer in Texas and provided to FBCDD for review.

- Final Report Submission: After incorporating feedback from FBCDD, the Engineer will submit a final report in PDF format, fully documenting project recommendations.

F. Additional Services (as needed)

The following additional services may be provided upon request by FBCDD if required:

1. Environmental Investigations: Assessments to identify environmentally sensitive areas, potential permitting requirements, and other environmental considerations that may impact project planning and implementation.
2. Topographic Surveying – Ground Verification / Spot Elevations: Supplemental surveys to verify elevations and support modeling where LIDAR data may be insufficient.
3. Utility Surveys and Data Collection: Field investigations to confirm potential utility conflicts and assess relocation requirements and costs.



APPENDIX B
Fresno-Arcola Drainage Improvements Feasibility Study
Fort Bend County Drainage District, Precinct 1
LEVEL OF EFFORT



31-Oct-24

		Project Manager	Project Engineer	Sr H&H Engineer	GIS Analyst	ADMIN	Total Hours	Total Fee
Contract Labor Rate		\$250.00	\$205.00	\$243.00	\$150.00	\$95.00		
Project Management								
A	General Project Management	18	10	10		10	48	\$ 9,930.00
B	Progress and Coordination Meetings	25	20	18		12	73	\$ 15,378.00
	Total	43	30	28	0	22	121	\$ 25,308.00
Phase 1 - Initial Drainage Pattern Analysis								
A	Data Collection	8	18	5		6	37	\$ 7,475.00
B	Site Visits	6	6	6			18	\$ 4,188.00
C	Baseline Conditions Review	10	24	24	10		68	\$ 14,752.00
D	Base Maps, Exhibits & Technical Report Memo							
	West of FM 521 - Roadside Ditch Drainage Patterns	2	2	4	10	2	20	\$ 3,572.00
	East of FM 521 - Roadside Ditch Drainage Patterns	4	2	8	18	2	34	\$ 6,244.00
	Total	18	30	30	10	0	88	\$ 36,237.00
Phase 2 - Mustang Bayou Review & Solutions Brainstorming								
A	Data Collection - Mustang Bayou Project (LAN)							
	Ongoing Drainage & Detention Project Plans & H&H Models	4	12	4		4	24	\$ 4,812.00
B	Identify Drainage Solutions/Alternatives that Complement the LAN Project							
	West of FM 521 - Alternatives to Enhance Local Street Drainage	2	4	8	8		22	\$ 4,464.00
	East of FM 521 - Alternatives for Channels and/or Detention Sites to Enhance Local Drainage	2	6	28	12		48	\$ 10,334.00
C	Technical Memo Report & QA/QC							\$ -
	Describing Existing Conditions, Mustang Bayou Project Plans, and Possible Alternatives to Analyze that Complement Project.	8	16	10	16	6		\$ 10,680.00
	Total	4	12	4	0	4	24	\$ 30,290.00
Phase 3 - H&H Modeling & Calculations								
A	Hydrology & Hydraulic (H&H) Modeling - Existing Conditions							
	West of FM 521 - to S. Post Oak Blvd, North of Sycamore St		2	16	6		10	\$ 5,198.00
	East of FM 521 - to County line including area south of SH 6 (includes N. Pine St., Coen Rd. and S. Pine St.)		4	32	12		20	\$ 10,398.00
	QA/QC Model Calibration & Checks		4	8			12	\$ 2,764.00
B	Level of Service (LOS) Evaluations & Problem Area Identification							\$ -
	West of FM 521 - Ditches/Channels/Stormsewers	4	16	4	20		44	\$ 8,252.00
	East of FM 521 - Ditches/Channels/Stormsewers	6	24	6	10		46	\$ 9,378.00
C	Technical Memo Report & QA/QC							\$ -
	Prepare Memo Report Describing Existing Conditions, Problem Areas and Possible Alternatives to be Analyzed in Proposed Conditions	2	16	8	8	6	40	\$ 7,494.00
D	Alternatives Analysis Modeling							
	West of FM 521 - Ditch/Channel/Stormsewer Sizing	6	20	40	20		86	\$ 18,320.00
	East of FM 521 - Ditch/Channel/Stormsewer Sizing & Detention Storage Requirements	14	40	80	40		174	\$ 37,140.00
	QA/QC Model Calibration & Checks		15	8			23	\$ 5,019.00
E	Preliminary Analysis of Impacts & Flood Damage Reductions							\$ -
	West of FM 521 - Ditch/Channel/Stormsewer Improvements	3	14	10	15		42	\$ 8,300.00
	East of FM 521 - Ditch/Channel/Stormsewer Improvements & Detention	3	25	15	20		63	\$ 12,520.00
F	Technical Memo Report & QA/QC							\$ -
	Prepare Memo Report Describing the Alternatives Analyzed and Level of Protection Provided by Each Alternative	10	60	6	20	4	100	\$ 19,638.00
	Total	48	240	233	171	10	660	\$ 144,419.00
Phase 4 - Right-of-Way & Cost Assessment of Drainage Improvements								
A	Site Identifications for Channels and/or Detention Ponds East of FM 521	3	25	16	20		64	\$ 12,763.00
B	Preliminary Investigation, Evaluation & Cost Estimates for Alternatives							
	Right-of-Way Acquisitions	4	8			3	15	\$ 2,925.00
	Utility Relocation/Adjustments	4	10		6	3	23	\$ 4,235.00
	Construction	6	30			5	41	\$ 8,125.00
	Total	17	73	16	26	11	143	\$ 28,048.00
Drainage Feasibility Study Report								
A	Final Drainage Improvements Feasibility Report & QA/QC	8	30	6	24	15	83	\$ 14,633.00
	Total	8	30	6	24	15	83	\$ 14,633.00
Additional Services (Placeholder Amount, as required)								
A	Environmental Investigations							\$ 10,000.00
B	Topographic Surveying - Ground Verifications/Spot Elevations							\$ 10,000.00
C	Utility Surveys & Data Collection							\$ 10,000.00
	Total	0	0	0	0	0	0	\$ 30,000.00
	BASIC SERVICES	136	415	315	231	62	1117	\$ 278,929.00
	ADDITIONAL SERVICES							\$ 30,000.00
	TOTAL HOURS	136	415	315	231	62	1117	
	TOTAL ENGINEERING SERVICES	\$34,000.00	\$85,075.00	\$76,545.00	\$34,650.00	\$5,890.00		\$ 308,929.00

