

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

(Fort Bend County Jail – 1st Floor Smoke Purge)

This Agreement for Professional Engineering Services (“Agreement”) is made and entered into by and between Fort Bend County, Texas (“County”), a political subdivision of the state of Texas, and Wheaton Engineering and Environmental Science, LLC (“Engineer”), a company authorized to conduct business in the State of Texas. County and Engineer may be referred to individually as a “Party” or collectively as the “Parties.”

WHEREAS, Engineer provides professional engineering services in the Greater Houston Area; and

WHEREAS, County desires for Engineer to provide such services for MEP Design and Commissioning Limiting Scope for the Fort Bend County Jail, 1st Floor; and

WHEREAS, Engineer represents that it is qualified and desires to perform such services for County; and

WHEREAS, pursuant to the requirements of Chapter 2254 of the Texas Government Code, County has determined that Engineer is the most highly qualified provider of such professional services and the Parties have negotiated a fair and reasonable price for the same; and

WHEREAS, this Agreement is not subject to competitive bidding requirements under Section 262.023 of the Texas Local Government Code because this Agreement is for professional engineering services and may not be competitively bid pursuant to Chapter 2254 of the Texas Government Code.

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 County as provided in Engineer’s Proposal Number PA-06202025A REV 1 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. The Services shall be

scheduled at a time that is mutually agreeable between the parties, but without delay. Engineer shall complete such tasks described in the Scope of Services, within this time or within such additional time as may be extended by County.

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 One Hundred Two Thousand, Eight Hundred dollars and 00/100 (\$102,800.00). In no event shall the amount paid by County 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) County will pay Engineer based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Engineer shall submit to County staff person designated by the County Engineer, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. Engineer shall submit invoices no more frequently than on a monthly basis. County 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. County 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 County'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, County 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 \$102,800.00. In no event shall the amount paid by County under this Agreement exceed the Maximum Compensation without a County approved change order. Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of \$102,800.00 specifically allocated to fully discharge any and all liabilities County 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 County may become liable to pay Engineer under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed \$102,800.00.

6. **Non-appropriation.** Engineer understands and agrees that in the event no funds or insufficient funds are appropriated by the County under this Agreement, County 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 County. In no event shall said termination of this Agreement or County's failure to appropriate said funds be deemed a breach or default of this Agreement or create a debt by County in any amount(s) in excess of those previously funded.
7. **Taxes.** Engineer understands and agrees that County 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. County shall furnish evidence of its tax-exempt status upon written request by Engineer.
8. **Insurance.** Prior to commencement of the Services, Engineer shall furnish County 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 County. Engineer shall provide certified copies of insurance endorsements and/or policies if requested by County. 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.

County 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 County.

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 County.

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

Approval of the insurance by County 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 COUNTY, 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 PROCURE AND MAINTAIN LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 8 OF THIS AGREEMENT.**

ENGINEER SHALL TIMELY REPORT TO COUNTY 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 COUNTY 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 COUNTY 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 COUNTY, WHETHER 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 County 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 County 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, County agrees to maintain the confidentiality of information provided by Engineer expressly marked as proprietary or confidential. County 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 County and shall not be entitled to any of the privileges or benefits of County employment.

13. **Use of Customer Name.** Engineer may use County's name without County's prior written consent only in Engineer's customer lists. Any other use of County's name by Engineer must have the prior written consent of County.
14. **County/County 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 County, 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 County's opinion, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement, shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at County's facilities, Engineer shall comply with, and will require that all Engineer's Personnel comply with, all applicable rules, regulations and known policies of County 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 County 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 County. Any and all information of any form obtained by Engineer or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("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 County 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 County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Engineer shall advise County 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 County in seeking injunctive or other equitable relief in the name of County or Engineer against any such person. Engineer agrees that, except as directed by County, 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 County's request, Engineer will promptly turn over to County 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 County that is inadequately compensable in damages. Accordingly, County 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 County 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 County. County, at all times, shall have a right of access to the Materials. Engineer shall promptly furnish and deliver all such Materials to County on request. Notwithstanding the foregoing, Engineer shall bear no liability or responsibility for Materials that have been modified post-delivery to County or used by County for a purpose other than that for which they were prepared under this Agreement.
18. **Inspection of Books and Records.** Engineer shall permit County, or any duly authorized agent of County, 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 County or their authorized representatives. County'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. County, 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. County, 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 County'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) County 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 County. If Engineer fails to cure such Default within such time, and to the reasonable satisfaction of County, then County may elect to terminate this Agreement for cause.

- (7) If, after termination of the Agreement by County 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 County 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 County and shall not incur any new obligations or perform any additional services for the work performed hereunder beyond the specified date. County 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 County.
 - (d) If County 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 County, 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.** County 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 County. 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 County 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 County: Fort Bend County Facilities Management & Planning
Attn: Director
301 Jackson Street, Suite 301
Richmond, Texas 77469

And

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

If to Engineer: Wheaton Engineering & Environmental Science, LLC
410 S. Enterprise Pkwy.
Corpus Christi, Texas 78405

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 County 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 County 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 County’s Travel Policy with those reimbursement limits shall be provided to Engineer upon request.
27. **Arbitration, Litigation Waiver, and Attorney Fees.** County does not agree to submit disputes arising out of this Agreement to binding arbitration nor does County 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.** County 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 County’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 County.** **ENGINEER UNDERSTANDS AND AGREES THAT UNDER THE TEXAS CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, COUNTY CANNOT ENTER INTO AN AGREEMENT WHEREBY COUNTY AGREES TO INDEMNIFY OR HOLD HARMLESS ANOTHER PARTY. THEREFORE, ANY AND ALL REFERENCES IN ENGINEER’S PROPOSAL TO COUNTY 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 COUNTY 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 County 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 County 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.

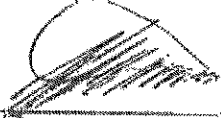
- 38. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, ENGINEER ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
- 39. **Captions.** The section captions used in this 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. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each having equal force and effect of an original.
- 42. **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.

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

FORT BEND COUNTY, TEXAS

WHEATON ENGINEERING AND ENVIRONMENTAL SCIENCE, LLC

KP George, County Judge



Authorized Agent – Signature

Date

Brent H. Wheaton

Authorized Agent- Printed Name

ATTEST:

VP

Title

Laura Richard, County Clerk

11/15/2026

Date

APPROVED:



James Knight,
Director of Facilities Management and Planning

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ 102,800.00 are available to pay the obligation of Fort Bend County, Texas within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

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EXHIBIT A

(Follows Behind)



PROPOSAL

WHEATON ENGINEERING AND ENVIRONMENTAL SCIENCE, LLC
 410 S. Enterprise Pkwy.
 Corpus Christi, Texas 78405
 Bus: (361) 299-1801 Fax: (361) 299-1804

Submitted To: Fort Bend County

DATE: 10/16/2025

Project: Jail 1st Floor Smoke Purge

Location: Richmond, TX

Proposal # PA-06202025A REV 1

Proposal – MEP Design and Commissioning Limited Scope

Page 1 of 5

We hereby submit estimates and quotations for:

Engineering Design: Scope

1. Design replacement and upgrade all of the exhaust fans to have substantial external static discharge pressure capable of overcoming the resistance pressures of the systems connected. Exhaust system shall be ducted directly into the cells and all areas to be purged to effectively increase the response time, thoroughness of the evacuation, and the elimination of nearly 157,000 ft³ of attic space ventilation.
2. Design replacement and upgrade all of the supply air fans to meet the demand of the new exhaust system and provide higher static pressures to help in supporting the exhaust and turbulent flow within the cells to mix and evacuate smoke more effectively.
3. Design replacement and upgrade the air handler systems due to age and to have the capability to assist with supply airflow. This modification would also include changing the outside air ducted intakes on air handlers to allow hundred percent outside air flow through each AHU, this substantially supports the supply airflow effort, however it's important to understand that this air would not be air-conditioned during a purge event.
4. Design purge air options/alternates for access corridor areas within the facility to support and protect staff during the smoke emergency.
5. Design each cellblock system to purge independently.
6. Design the air handler system upgrade utilizing fan wall configured air handler systems which provide better redundancy relative to both smoke purge and cooling modes.
7. Design power upgrades and circuit system to support enlarged smoke purge system.
8. Provide DDC control diagrams and sequences to support the new smoke purge system.

Project List

Item	Task	Est Cost	Engineering
New AHUs	New System AHU 3,4,5,6	\$ 252,000.00	\$ 12,600.00
AHU O.A. Duct	100% O.A. & Control	\$ 79,000.00	\$ 3,950.00
Exhaust Fan	New Fan System 85,000 CFM	\$ 462,000.00	\$ 23,100.00
Supply Fan	New Supply Fan System	\$ 279,000.00	\$ 13,950.00
Smoke Purge	Cooridor Area	\$ 150,000.00	\$ 7,500.00
Controls	Dampers & DDC	\$ 102,000.00	\$ 5,100.00
	Totals	\$ 1,324,000.00	\$ 66,200.00
	Total	\$ 1,390,200.00	

Commissioning work: Scope & Requirements

1. Contractor to provide full-time DDC technician to operate fan equipment and selected dampers or other control functions for testing and commissioning verification. Estimated work would be one day. Scheduled fire alarm technician to operate smoke purge and controls alarms.
2. Contractor's technician for HVAC modification to modify or correct actuators, valves and other devices in real time during the commissioning operations.
3. All required parts, pulleys, sensors and other items required for correction of deficiencies. Wheaton will not perform any equipment modifications or adjustments, other than potentially positioning damper actuators. Final balancing points will be marked in the field where applicable and recorded.
4. Access for continued work within the project space, and mechanical rooms with permission and understanding to turn off and on HVAC and cycle valve or damper systems modifying the HVAC condition within the space at minimum levels.
5. Owner management of the commissioning space such that HVAC functions can be tested, through manual adjustment of the initiation process. Plan will be to maintain building occupancy, with the understanding that at some point for one hour or less there may be an interruption in the air conditioning this is required to significantly verify the operation of the (heat-cool)(smoke purge) changeover, and change back to HVAC status.
6. Contractor verification that the systems are completely operable and DDC controls are connected and functioning before any commissioning/test and balance work is initiated.
7. Contractor maintenance and replacement of existing air filters to eliminate skewed data on air handler flow calculations and measurements.

Archive Area

AHU Zone	Task
AHU-3	Balance AHU Output Supply Air Purge Cycle
AHU-3	Balance Exhaust Fan and Distribution
AHU-3	Verify Supply System Air Flow
AHU-3	Commission Cycle Smoke Purge Manual Only, No State Test
AHU-3	Commission New Purge Supply at AHU
AHU-3	Commission New Exhaust Purge Cycle
AHU-4	Balance AHU Output Supply Air Purge Cycle

Engineering services

AHU-4	Balance Exhaust Fan and Distribution
AHU-4	Verify Supply System Air Flow
AHU-4	Commission Cycle Smoke Purge Manual Only, No State Test
AHU-4	Commission New Purge Supply at AHU
AHU-4	Commission New Exhaust Purge Cycle
AHU-5	Balance AHU Output Supply Air Purge Cycle
AHU-5	Balance Exhaust Fan and Distribution
AHU-5	Verify Supply System Air Flow
AHU-5	Commission Cycle Smoke Purge Manual Only, No State Test
AHU-5	Commission New Purge Supply at AHU
AHU-5	Commission New Exhaust Purge Cycle
AHU-6	Balance AHU Output Supply Air Purge Cycle
AHU-6	Balance Exhaust Fan and Distribution
AHU-6	Verify Supply System Air Flow
AHU-6	Commission Cycle Smoke Purge Manual Only, No State Test
AHU-6	Commission New Purge Supply at AHU
AHU-6	Commission New Exhaust Purge Cycle

Exclusions:

- a) Permitting and permitting applications for construction permits. No work is provided for dealing with permit applications.
- b) Taxes and permit fees of any kind.
- c) Continuous inspection or supervision during construction.
- d) Physical testing during construction
- e) Construction work, or installation of the design components provided.
- f) Final as built drawings of the project post construction, red marks only.
- g) Permitting and any regulatory communications with State. Fort Bend County will represent and handle permitting.
- h) Windstorm or structural design work, unless approved below.

References:

Attachments: 0 Pages

We Propose hereby to furnish professional services - complete in accordance with above specifications, for the sum of: **MEP - Sixty Six Thousand, Two Hundred Dollars (\$66,200.00)**
Additional Structural Design - Nine Thousand Dollars (\$9,000.00) Exhaust Fan Support
Commissioning Fee - Twenty Seven Thousand, Six Hundred Dollars (\$27,600.00)
Contract Total - One Hundred and Two Thousand, Eight Hundred Dollars (\$102,800.00)

Payment to be made as follows:

Net 30 Days upon receipt, of payment to client, billed monthly

Documents and professional papers shall remain personal property and company shall retain title thereof until final payment and settlement is made.

Engineering services

<p>Subject to term and Conditions of Sale Page 4 & 5 of 5</p> <p>Justin Zwahr Fort Bend County Facilities Maintenance Manager Office: (281) 238-3064 Cell: (281) 682-8364 Fax: (281) 238-3577 Justin.Zwahr@fortbendcountytexas.gov</p>	<p>WHEATON ENGINEERING AND ENVIRONMENTAL SCIENCE, LLC (WHEATON) Authorized</p> <p>Signature _____ Ronald B. Wheaton, P.E., Vice President</p> <p>Date: _____ October 16, 2025</p>
<p><i>Acceptance of Proposal</i> - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.</p> <p>Date of Acceptance _____</p>	<p>Signature: _____ (Client)</p> <p>Title/Firm: _____</p>

Terms and Conditions:

Cancellation: If, following acceptance of this proposal by the **Client**, all or any portion of this order is canceled by the **Client** without default on the part of the **WHEATON** or without **WHEATON's** written consent, the **Client** shall be liable to **WHEATON** for cancellation charges including, but not limited to, **WHEATON's** incurred costs and such profit as would have been realized by **WHEATON** from the transaction had the agreement not been breached by the **Client**.

- B) **Payment:** Payment terms for goods shipped hereunder will be net 30 days unless contrary terms appear on page 1 of 2 hereof or unless otherwise expressly agreed to in writing by **WHEATON**. **WHEATON** reserves the right to add to any account outstanding for more than 30 days a service charge of 1 ½ % of the principal amount due at the end of each month, or the maximum allowable legal interest rate, if lesser amount.
- C) **Information Provided by Client:** Any existing information, including but not limited to existing calculations, drawings, investigations, soil borings, or any other information available to the **Client**, and having any effect on this work shall be provided to **WHEATON**.
- D) **Products:** Complete bid specifications and bid drawings.
 Materials supplied: (one (1) set of review drawings, (1) complete original bid package, (WHEATON Engineering drawings only).
 * Complete, updated "as-built" drawings. are not included
- E) **Agency Coordination:** This proposal also covers a reasonable amount of consulting time for consultation with the Facility Operations Staff representatives. Other contact is not included or in anyway implied.
- F) **Contractual Requirements:** Services and fees are dependent upon and require compliance with the following:
 1. Design work and engineering required to perform changes in the base design made after the conceptual design completion and changes in the overall scope of work shall be treated as extras to be billed hourly or negotiated, fee charges shall be based on the most current revision of the **WHEATON** Rate sheet.
 2. Sufficient inspection services so as to comply with Section 19, Texas Engineering Practice Act are not included and not be performed by **WHEATON** without additional compensation from **Client** Payment shall be due for each completion point upon delivery in accordance with the following schedule. Payment shall be received for Step 2 before Step 3 is provided.

Step	Percentage of Total Contract Billing	Completion Point
1.....	20%.....	On Program Completion
2.....	80%.....	On Design Completion
3.....	90%.....	On Sealing and Issuing Final Drawings
4.....	100%.....	On Project Completion

Step	Percentage of Total Contract Billing (Commissioning)	Completion Point
A.....	20%.....	Initiation and Pre-Test
B.....	70%.....	Field Work Completion
C.....	100%.....	Final Report Issue

Neither, **WHEATON**, **WHEATON's** consultants, nor their agents or employees shall be jointly, severally, or individually liable to the **Client**, in excess of the compensation to be paid pursuant to this Agreement, by reason or any act or omission, including breach of contract or negligence not amounting to a willful or intentional wrong.

It is understood and agreed that **WHEATON**'s basic services under this AGREEMENT do not include full-time construction observation or review of the Contractor's performance. **Client** acknowledges the importance of such services and, should **Client** have such services performed by a party other than **WHEATON**, the **Client** shall assume responsibility for interpretation of the contract documents and for construction observation and shall waive any claims against **WHEATON** that may be in any way connected thereto.

Engineering Services

In addition, if **WHEATON** does not perform full-time construction observation, **Client** shall, to the fullest extent permitted by law, indemnify and hold **WHEATON** harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments, or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of **WHEATON**.

The signatures of the concerned parties on page one of this form shall constitute an agreement between the parties such that **WHEATON** shall perform the described work in return for compensation from **Client** under the terms and conditions both documents and implied. **WHEATON**, appreciates the opportunity to provide these services.