

**FORT BEND COUNTY FY 2010
COMMISSIONERS COURT AGENDA REQUEST FORM**

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: 01/29/2010

Submitted By: Mary Reveles

Court Agenda Date: 02/09/2010

Department: County Attorney

Phone Number: 341-4554

SUMMARY OF ITEM:

ENGINEERING:

Take all appropriate action on the Professional Engineering Services Agreement between Fort Bend County and Jacobs Engineering Group in an amount not to exceed \$295,582.40 for services provided for the expansion of FM 1093/Westpark Tollway, Mobility Bond Project No. 748. (Fund 2007 Mobility Bonds).

RENEWAL AGREEMENT/APPOINTMENT YES ☐ NO ☒
REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES ☒ NO ☐

List Supportina Documents Attached:

FINANCIAL SUMMARY:BUDGETED ITEM: YES ☐ NO ☐ N/A

FUNDNG SOURCE: Accounting Unit: Account Number: N/A
Activity (If Applicable):

DESCRIPTION OF LAWSOM ACCOUNT: _____(Fund: 2007 Mobility Bond Projects.)

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office ☒ (✓ when completed)

If by E-Mail to ospindon@co.fort-bend.tx.us

If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

<input type="checkbox"/> Auditor (281-341-3774)	<input checked="" type="checkbox"/> Comm. Pct. 1 (281-342-0587)
<input checked="" type="checkbox"/> Budget Officer (281-344-3954)	<input checked="" type="checkbox"/> Comm. Pct. 2 (281-403-8009)
<input type="checkbox"/> Facilities/Planning (281-633-7022)	<input checked="" type="checkbox"/> Comm. Pct. 3 (281-242-9060)
<input checked="" type="checkbox"/> Purchasing Agent (281-341-8642)	<input checked="" type="checkbox"/> Comm. Pct. 4 (281-980-9077)
<input checked="" type="checkbox"/> Road & Bridge	<input checked="" type="checkbox"/> County Clerk (281-341-8697)
<input checked="" type="checkbox"/> Engineering	<input checked="" type="checkbox"/> County Atty (281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify): 2-19-10 3 origs. ret. to Mary
2nd Co. Attorney

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
PROJECT NO. 748**

THIS AGREEMENT is made and entered into by and between FORT BEND COUNTY, TEXAS, a public body corporate and politic of the State of Texas acting by and through the Fort Bend County Commissioners Court (hereinafter referred to as “County”) and Jacobs Engineering Group Inc (hereinafter referred to as “Engineer,”) authorized to conduct business in the State of Texas.

W I T N E S S E T H

WHEREAS, County proposes to expand FM 1093 / Westpark Tollway, Project No. 748, located in Fort Bend County, Texas, as part of the 2007 Fort Bend County Mobility Programs, hereinafter referred to as the “Project;” and,

WHEREAS, County desires to enter into this Agreement for the performance by Engineer of professional services related to the Project; and,

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, TEXAS LOCAL GOVERNMENT CODE; and

WHEREAS, County has determined that this Agreement serves a public purpose.

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

AGREEMENT

**SECTION I
SCOPE OF AGREEMENT**

- 1.01 Engineer shall render professional services to County related to the Project as described in the Scope of Work which is included as Attachment B.
- 1.02 Engineer shall use all best efforts to perform all professional services agreed hereunder in a manner satisfactory and acceptable to County, in keeping with the highest professional standard of care provided by engineers in similar projects. Engineer shall use its best efforts to ensure that all services provided hereunder shall be suitable for their intended use.
- 1.03 Engineer shall use all best efforts and measures to implement its responsibilities under this Agreement to safeguard County against defects and deficiencies in the completed services provided under this Agreement. However, Engineer will promptly inform County whenever defects and deficiencies in the completed service are observed, or when

any observed actions or omissions are undertaken which are not in the best interest of County and the Project.

- 1.04 At the request of County, Engineer shall provide appropriate personnel for conferences at its offices, or attend conferences at the various offices of County, or at the site of the Project, and shall permit inspections of its offices by County, or others when requested by County.
- 1.05 If requested by County, or on its behalf, Engineer shall prepare such engineering exhibits and plans as may be requested for all hearings related to the Project, and, further, it shall prepare for and appear at conferences at the office of the County's Engineer, hereinafter referred to as "County Project Manager," and shall furnish competent expert engineering witnesses to provide such oral testimony and to introduce such demonstrative evidence as may be needed throughout all trials and hearings with reference to any litigation relating to the Project.

SECTION II THE ENGINEER'S COMPENSATION

- 2.01 For and in consideration of the services rendered by Engineer, and subject to the limit of appropriation under Section XVI, County shall pay to Engineer an amount not to exceed \$295,582.40, including all reimbursable expenses.
- 2.02 Progress payments for authorized work detailed in Attachment A -Fee Schedule will be made when Engineer has attained a level of completion equal to or greater than agreed upon milestones of completion, as determined solely by County.
- 2.03 Engineer shall not provide any services under this Agreement until authorized by County in a Notice to Proceed.
- 2.04 Engineer shall submit invoices to County as detailed in Section 2.05 below and County shall pay each invoice within thirty (30) days after the County Project Manager's written approval provided however, that the approval or payment of any invoice shall not be considered to be conclusive evidence of performance by the Engineer to the point indicated by such invoice or of receipt or acceptance by the County of the services covered by such invoice.
- 2.05 Engineer shall submit to County two (2) copies of invoices detailing the amounts due for services performed during the previous month, set forth separately for work under this Agreement, and accompanied by a progress report indicating the percent complete for the Schedule of Values describing the tasks performed in a form acceptable to County. County shall reserve the right to withhold any payment pending verification of satisfactory work performed. County shall process all uncontested invoices within thirty (30) calendar days.

SECTION III TIME OF PERFORMANCE

- 3.01 This Agreement shall become effective upon execution of the last party and shall terminate on or before December 31, 2011.
- 3.02 Services described in Attachment B – Scope of Work shall be completed in accordance with the Work Schedule provided in Attachment C or within such additional time as may be extended in writing by the County.

- 3.03 Any services provided by Engineer or any costs incurred by Engineer before issuance of Notice to Proceed or after the expiration of this Agreement shall be ineligible for payment or reimbursement.

SECTION IV TERMINATION

- 4.01 County may terminate this Agreement at any time by providing thirty (30) days written notice to Engineer.
- 4.02 Upon receipt of such termination notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 4.03 Within thirty (30) days after receipt of notice of termination, Engineer shall submit a statement, describing in detail the services performed under this Agreement to the date of termination.
- 4.04 County shall then pay Engineer that proportion of the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.
- 4.05 Copies of all completed or partially completed designs, drawings, electronic data files and specifications and reports of any kind prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

SECTION V INSPECTIONS OF ENGINEER'S BOOKS AND RECORDS

Engineer shall permit County, or any duly authorized agent of the County, to inspect and examine all books and records of the Engineer for the purpose of verifying the amount of work performed on the Project by Engineer. County's right to inspect survives the termination of this Agreement for a period of four (4) years.

SECTION VI OWNERSHIP AND REUSE OF DOCUMENTS

- 6.01 All documents, including original drawings, electronic files, correspondence, estimates, specifications, field notes, and data created, produced, developed or prepared by Engineer or its approved outside advisory or support consultants (collectively, the "Documents") shall be the property of County.
- 6.02 County shall not be entitled to any Documents not deemed "final" by the Engineer until termination of this Agreement.
- 6.03 Engineer shall deliver all Documents to County within thirty (30) days of the termination of this Agreement and may retain a set of reproducible record copies of the documents, provided that Engineer has received full compensation due pursuant to the terms of this Agreement. County shall use the Documents solely in connection with the Project and for no other purposes, except with the express written consent of Engineer, which consent will not be unreasonably withheld. Any use of the Documents without the express written

consent of the Engineer will be at the County's sole risk and without liability or legal exposure to Engineer.

- 6.04 County shall also be the owner of all intellectual property rights of the services rendered hereunder, including all rights of copyright therein. County and Engineer agree that the services provided are a "work for hire" as the term is used in the federal Copyright Act. Moreover, Engineer's worldwide right, title and interest in and to such work product and all rights of copyright therein.
- 6.05 Any trademarks, trade names, service marks, logos, or copyrighted materials of County are permit only for use in connection with the services and shall not be used without County's consent and shall remain in the sole and exclusive properties of County.

SECTION VII PERSONNEL, EQUIPMENT, AND MATERIAL

- 7.01 Engineer represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the professional services required under this Agreement. Engineer shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment to perform the professional services when and as required and without delays.
- 7.02 County will approve assignment and release of all key Engineer personnel and that the Engineer shall submit written notification of all key Engineer personnel changes for the County's approval prior to the implementation of such changes. For the purpose of this agreement, key Engineer personnel are defined in Attachment D, Key Personnel. Services described in this Agreement shall be performed under the direction of an engineer licensed to practice professional engineering in the State of Texas.
- 7.03 All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them to the standard stated in this Agreement. Any employee of the Engineer who, in the opinion of the County, is incompetent or by his conduct becomes detrimental to the Project shall, upon request of the County, immediately be removed from association with the Project.
- 7.04 Except as otherwise specified herein, Engineer shall furnish all equipment, transportation, supplies, and materials required to provide all services subject to this Agreement.

SECTION VIII ITEMS TO BE FURNISHED TO ENGINEER BY THE COUNTY

County shall provide to Engineer copies of preliminary studies, assistance in the coordination with all utility companies and assistance in coordination with all public and governmental entities.

SECTION IX ENGINEER'S INSURANCE REQUIREMENTS

- 9.01 Engineer shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth below.
- 9.02 Engineer shall furnish certificates of insurance to County evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of Engineer, name of

insurance company, policy number, term of coverage and limits of coverage. Engineer shall cause its insurance companies to provide County with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. Engineer shall obtain such insurance from such companies having Bests rating of A- 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 Insurance in accordance with the laws of the State of Texas, or state or hire/location of Services, and Employers' Liability coverage with a limit of not less than \$500,000 each employee for Occupational Disease, \$500,000 policy limit for Occupational Disease; and Employer's Liability of \$1,000,000 each accident.
 - B. Commercial General Liability Insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:
 - \$1,000,000 general aggregate limit
 - \$325,000 each occurrence, combined single limit
 - \$325,000 aggregate Products, combined single limit
 - \$325,000 aggregate Personal Injury/Advertising Liability
 - \$50,000 Fire Legal Liability
 - \$5,000 Premises Medical
 - C. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$300,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
 - D. Professional Liability insurance with limits not less than \$2,000,000 each claim/annual aggregate.
- 9.03 County and the County Commissioners shall be named as additional insureds on all coverages required above with the exception of Workers Compensation Insurance, Employers Liability Insurance and Professional Liability Insurance. The Workers Compensation Insurance written on behalf of Engineer shall contain a waiver of subrogation in favor of County and County Commissioners.

SECTION X INDEMNIFICATION

- 10.01 ENGINEER SHALL INDEMNIFY, DEFEND AND HOLD COUNTY HARMLESS FROM EACH AND EVERY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN OR JUDGMENT CAUSED BY OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, OR IN CONNECTION WITH THE ACTS AND OMISSIONS OF ENGINEER PURSUANT TO THIS AGREEMENT.

- 10.02 Engineer shall timely report all such matters to County and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month, provide County with a written report on each such matter covered by this paragraph and by Section 10.03 below, 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.
- 10.03 County shall timely forward to ENGINEER copies of any and all claims, demands, suits, actions, proceedings or judgments which it may receive and which it may contend is covered by this section. Thereafter, County shall fully cooperate with Engineer in its defense of each such matter.
- 10.04 ENGINEER'S DUTY TO DEFEND INDEMNIFY AND HOLD COUNTY HARMLESS SHALL BE ABSOLUTE. IT SHALL NOT ABATE OR END BY REASON OF THE EXPIRATION OR TERMINATION OF THIS AGREEMENT UNLESS OTHERWISE AGREED BY COUNTY IN WRITING. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ALL SUCH MATTERS NO MATTER WHEN THEY ARISE.
- 10.05 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Engineer, 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 the acts and omissions of Engineer are not at issue in the matter. In such event, County shall promptly reimburse Engineer for its costs of defense.
- 10.06 In the event that any such matter being so defended by Engineer also involves any claim of negligence or wrongful action by County, County shall have the obligation to participate in the defense of the matter through separate counsel.
- 10.07 Engineer shall have full authority to resolve all matters being defended by it providing such settlement(s) shall not involve any findings adverse to County and shall not involve or require any payments or contributions by County.
- 10.08 In the event of any final judicial determination or award of any matter covered by this section, County shall be responsible to third parties, pro rata, for any negligence determined to have been caused by County.
- 10.09 Engineer's indemnification shall cover, and Engineer shall indemnify County, in the manner provided for and to the extent described above, in the event County is found to have been negligent for having selected Engineer to perform the work described in this Agreement.
- 10.10 The provision by Engineer of insurance shall not limit the liability of Engineer under this Agreement.
- 10.11 Engineer shall cause all contractors and consultants who may have a contract to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify County and to hold County harmless from all claims for bodily injury and property damage that may arise from said contractor or consultant's operations. Such provisions shall be in form satisfactory to County.
- 10.12 County shall be exempt from, and in no way liable, for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Engineer providing such insurance.

SECTION XI DISPUTE RESOLUTION

- 11.01 In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, County and Engineer agree to submit the dispute to mediation.
- 11.02 In the event County or Engineer desire to mediate any dispute, that party shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation.
- 11.03 All expenses associated with mediation shall be shared 50 percent (50%) by each party.
- 11.04 The requirement to seek mediation shall be a condition required before filing an action at law or in equity.

XII NOTICE

- 12.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or Engineer at the addresses set forth below.
- 12.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 12.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to Engineer:

Jeff Anderson
Senior Environmental Planner
5995 Rogerdale Road
Houston, Texas 77072

B. If to County notice must be sent to the County Project Manager:

D. Jesse Hegemier, PE
County Engineer
1124-52 Blume Road
Rosenberg, Texas 77471

- 12.03 Either party may designate a different address by giving the other party ten (10) days written notice.

SECTION XIII REPORTS OF ACCIDENTS

- 13.01 Within 24 hours after the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an

- employee of Engineer), Engineer shall send a written report of such accident or other event or County, setting forth a full and concise statement of the facts pertaining thereto.
- 13.02 Engineer shall also immediately send County a copy of any summons, subpoena, notice, other documents served upon Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from Engineer's performance of work under this Agreement.

SECTION XIV WORK AUTHORIZATIONS

NOT APPLICABLE TO THIS CONTRACT

SECTION XV LIMITATIONS

Notwithstanding anything herein to the contrary, all covenants and obligations of County under this Agreement shall be deemed to be valid covenants and obligations only to extent authorized by the Act creating County and permitted by the laws and the Constitution of the State of Texas. This Agreement shall be governed by the laws of the State of Texas, and no officer, director, or employee of County shall have any personal obligation hereunder.

SECTION XVI LIMIT OF APPROPRIATION

- 16.01 Prior to the execution of this Agreement, Engineer has been advised by County, and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that County shall have available the total maximum sum of \$295,582.40, including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by County.
- 16.02 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 hereunder and the total maximum sum that County shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$295,582.40 for described scope of services in Attachment B.

SECTION XVII SUCCESSORS AND ASSIGNS

- 17.01 County and Engineer bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement.
- 17.02 Neither County nor Engineer shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other.

SECTION XVIII PUBLIC CONTACT

- 18.01 Contact with any media, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of County.
- 18.02 Under no circumstances, whatsoever, shall Engineer release any material or information developed or received from County in the performance of its services hereunder without the express written permission of County, except where required to do so by law.

SECTION XIX MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XX MISCELLANEOUS

- 20.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 20.02 Nothing contained in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 20.03 Engineer agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; Engineer and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 20.04 The captions of subtitle of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.
- 20.05 This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.
- 20.06 Engineer shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Engineer shall furnish the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

SECTION XXI APPENDICES

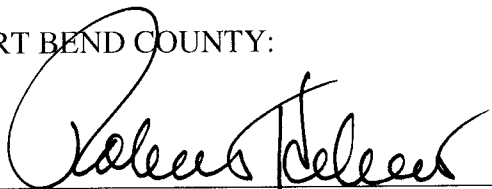
The Appendices attached to this Agreement, which consists of the following and are incorporated herein by reference as if set forth verbatim:

Attachment A	Fee Schedule
Attachment B	Scope of Work
Attachment C	Work Schedule
Attachment D	Key Personnel

SECTION XXII
EXECUTION

This Agreement shall not become effective until executed by all parties hereto.

FORT BEND COUNTY:



Robert E. Hebert, County Judge

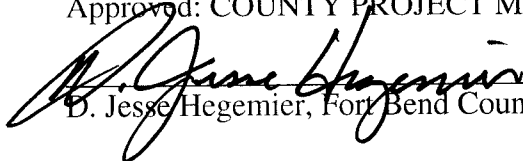
2-9-10
Date

Attest:



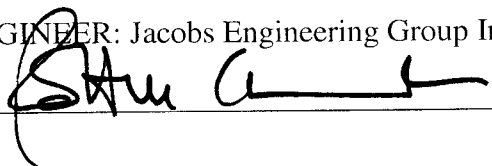
Dianne Wilson, County Clerk

Approved: COUNTY PROJECT MANAGER



D. Jesse Hegemier, Fort Bend County Engineer


ENGINEER: Jacobs Engineering Group Inc



Steve A.

1/28/10
Date

Attest:

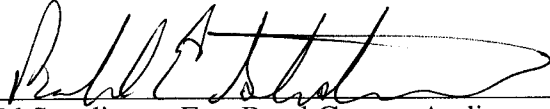


Asst Corp Sect.

MER:Engineering Services Agreement.3791-

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$295,582.40 to accomplish and pay the obligation of the Fort Bend County under this contract.



Ed Sturdivant, Fort Bend County Auditor

[illegible]

Attachment B – Scope of Work

FM 1093 (Westpark Tollway Extension): SH 99 to James Lane
Environmental Assessment
Fort Bend County
January 12, 2010

The work to be performed by Jacobs Engineering Group Inc. (Engineer) shall consist of providing engineering services required for preparing an Environmental Assessment (EA) anticipating a Finding of No Significant Impact (FONSI) for FM 1093 from SH 99 to James Lane in Fort Bend County. The project consists of widening the roadway from a two-lane undivided facility to a four-lane divided facility and for the ultimate extension of the Westpark Tollway. A short segment (approximately 1,800 feet) of the existing roadway would be realigned on new location in the City of Fulshear. Currently, the City of Fulshear is funding a Categorical Exclusion (CE) for this short realignment segment. The Draft CE has been completed and submitted and is being reviewed. However, the short realignment segment covered by the CE is a non-added capacity non-toll project. Therefore, the EA would also have to cover this short realignment segment for the added capacity and tolling aspects. This CE will be provided to the Engineer. The proposed project is approximately 8.1 miles long. The existing right-of-way (ROW) varies from 100 to 120 feet. The proposed ROW is typically 240 feet. The proposed ROW widens to as much as 315 feet at major cross streets. Additional ROW in the typical amount of 120 to 140 feet is required. Typically, fifty feet of additional ROW would be acquired on the south side of FM 1093 and 90 feet would be acquired on the north side of FM 1093. All work to be performed under this contract shall be subject to review and approval by Fort Bend County, the Texas Department of Transportation (TxDOT) and the Federal Highway Administration (FHWA). The Engineer will provide the overall project supervision, management, administration and coordination. All alternatives and schematic design efforts supporting the EA will be performed by others. A tolling analysis will also be provided by others. This Scope of Work and Fee Schedule assumes that there will be no design changes after initial receipt of the design schematic that require additional work or revisions to work already performed.

The Engineering work required is described below according to each task to be performed.

TASK DESCRIPTIONS

Task 1 – Data Collection:

Collect, review and evaluate available and appropriate data pertaining to this project and/or the project area.

Task 2 – Initial Public Involvement:

- **Create Mailing List** – The Engineer will maintain a mailing list of adjacent property owners and interested citizens. Fort Bend County will provide the initial mailing list.
- **Public Meeting** –The Engineer will coordinate, schedule, organize and provide three environmental staff members to attend one Public Meeting to be held in an open house format. The purpose of the Public Meeting is to present the proposed design to the public

and solicit comments. The Engineer will locate and reserve the facility. The Engineer will prepare printed materials (sign-in sheets, program, written comment forms), and the constraints map exhibit for use during the meeting. The Engineer will be responsible for the cost of advertising, printed material, and facility rental. Two copies of the proposed schematic and typical sections will be provided by others for display at the public meeting.

- **Public Meeting Notice** - The Engineer will notify the public in advance of the Public Meeting through the use of newspaper advertisements. The Notice of Public Meeting will be published approximately 30 and 10 days prior to the meeting in a major, local and Spanish newspaper. The Engineer will prepare the Notice of Public Meeting for review by the County, TxDOT's Houston District and TxDOT's Environmental Affairs Division (ENV) prior to publication in the newspapers. The Engineer will mail Public Meeting notices to all adjacent property owners, as well as other identified interested citizens, and prepare public official letters to be sent by TxDOT's Houston District Office.
- **Public Meeting Summary Report**-The Engineer will prepare and submit a Public Meeting summary report to Fort Bend County and TxDOT's Houston District Office. The report will contain the following information:
 - Program;
 - Sign-in sheets;
 - Public meeting notices;
 - Mailing list;
 - Written public comments;
 - Summary of the proceedings and public comments; and
 - Responses to written public comments received by the deadline

Task 3 – Right-of-Entry Letters and Agency Coordination:

Names and addresses of adjacent property owners for purposes of right-of-entry letters will be provided to the Engineer under Task 2. The Engineer will write and mail right-of-entry letters to adjacent property owners to request permission to enter their property to conduct environmental investigations. The Engineer will also write and mail agency coordination letters to the Texas Parks and Wildlife Department and the Fort Bend County Historical Commission.

Task 4 – Noise Analysis:

A noise analysis shall be performed (using FHWA's Traffic Noise Model TNM 2.5), including existing and predicted noise levels and the consideration and evaluation of noise mitigation (if necessary), in accordance with the current version of TxDOT's "Guidelines for Analysis and Abatement of Highway Traffic Noise". The noise analysis or summary of the noise analysis shall be included in the EA for the project.

The EA will summarize the noise impact analysis, identifying noise sensitive receivers that will be exposed to peak hour noise levels that approach, equal or exceed the FHWA Noise Abatement Criteria or would be exposed to a substantial increase. Exhibits and tables will be prepared to explain the results, identifying noise modeling locations, existing and predicting noise levels, changes in peak hour L_{eq} noise levels, noise contours, and possible mitigation measures. If

mitigation measures are required, a noise barrier analysis will be performed within TxDOT ROW to determine if noise barriers are considered reasonable and feasible.

Task 5 – Air Quality Analysis:

A traffic air quality analysis (for carbon monoxide) and a quantitative Mobile Source Air Toxics (MSAT) analysis are not required based on the proposed project having less than 140,000 Average Annual Daily Traffic. In June 2006, TxDOT issued their updated Air Quality Guidelines to include MSAT assessments. Therefore, a qualitative MSAT assessment will be conducted and the results documented in the EA.

Task 6 – Ecological Investigations:

A wetland determination and delineation (if necessary) shall be conducted and properly documented for the length of the project. Wetland determinations will be performed within the existing and proposed ROW using the current federally accepted procedures contained in the *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region, October 2008*, effective January 15, 2009. This task will include completing all necessary data forms for each potential wetland in the project area. Representative uplands will be documented on these data forms also. Data forms should be completed each time the vegetation community changes within the project area. All data points will be reproducible through a differentially corrected Global Positioning Systems (GPS). Boundaries of potentially impacted wetland sites will be staked and surveyed with the GPS system prior to and after verification by the USACE through TxDOT.

This task will also include identifying any other waters of the U.S. (e.g. creeks, streams, etc.), which would be subject to regulation under Section 404 of the Clean Water Act. This task will also include determining whether a wetland area is isolated verses adjacent to waters of the U.S. using the Memorandum from the USACE, Galveston District, dated February 13, 2001 regarding adjacent/isolated criteria. Three criteria will be evaluated when determining whether a wetland area is isolated or adjacent, including 1) proximity, 2) hydrological connections and 3) two-barrier rule. It is believed potential wetland impacts could be covered under the Nationwide Permit (NWP) program. The Engineer will work with the engineering design team to avoid and/or minimize impacts, if necessary, to qualify for a NWP. The Engineer will prepare any necessary preconstruction notifications required under the NWP program with the assistance of others regarding engineering details. The Engineer will accompany a USACE representative for one onsite field visit for verification purposes. The Engineer will adjust any boundaries as necessary and any adjusted boundaries of the verified delineations will be surveyed and re-mapped. The Engineer will be responsible for mapping any delineated wetlands.

The Engineer shall perform Threatened and Endangered Species surveys within the existing and proposed ROW. Any identification of Threatened and Endangered species and/or their habitat will be noted on appropriate maps and coordination with the U.S. Fish and Wildlife Service would be initiated. This information would also be documented in the EA.

Task 7 – Hazardous Materials:

The Engineer shall perform a Hazardous Materials Assessment, which will include a federal/state hazardous materials database search and an onsite investigation. The results of the hazardous materials investigations will be included in the EA.

Task 8 – Cultural Resources:

RECONNAISSANCE-LEVEL IDENTIFICATION AND EVALUATION OF HISTORIC-AGE BUILDINGS, STRUCTURES AND OBJECTS

RESEARCH DESIGN

Ecological Communications Corp. (EComm), under contract to the Engineer, shall prepare a Research Design for review and approval by TxDOT. The research design will comply with the TxDOT “Standards of Submission for Non-Archeological Historic-Age Resource Research Designs Review Checklist.”

FIELD INVESTIGATION

- 1) EComm shall perform a reconnaissance survey conforming to the methodology outlined in Appendix B of the *Draft CRM Guide for Accurately Identifying Non-Archeological Cultural Resources* (Texas Department of Transportation, April 2006).
- 2) The survey shall document each historic-age resource (defined in 36 CFR 60 as a building, structure, object, historic district or non-archeological site at least 50 years old at the time of letting) within the Study Area. The Study Area consists of the APE plus all parcels that are wholly or partially contained within the APE.

SURVEY REPORT

EComm shall provide a letter report detailing the results and findings of the reconnaissance survey and the need, if any, to conduct intensive survey efforts. The report shall have sufficient detail and clarity to provide THC with the basis for making determinations of National Register of Historic Places (NRHP) eligibility or shall have sufficient detail and clarity to make recommendations concerning the scope of the intensive survey. The report shall include the following items:

- A brief overview of the results of the reconnaissance survey, including an inventory of historic age resources requiring no additional survey efforts in order to finalize determinations of NRHP eligibility in accordance with 36 CFR 60.
- Photographic documentation for each historic-age resource sufficient in number and perspective to satisfy THC documentation requirements, except under circumstances beyond EComm’s control. At a minimum, this shall include an oblique view of the primary facade and side elevation for each resource, with the subject filling the frame. All photographs shall be not less than 3 1/2” x 5” color images. All photographs shall be well focused and clearly depict architectural and other details relevant to an evaluation of the resource’s character-defining features. Photographs shall be attached to separately labeled pages that clearly identify project name, address of resource, and project I.D. number.
- EComm shall provide an inventory of all resources in a tabular form that lists their project I.D. numbers, locations/addresses, property type and subtype classifications, stylistic influences, construction dates, integrity issues, and preliminary eligibility recommendations.
- EComm shall prepare mapping showing the location of the project, the project limits, and each documented resource.
- Proposed changes to the research design arising from the results of the reconnaissance survey, including contextual issues, comparative property information needs, data gaps,

and other items necessary to finalize the evaluation and documentation phases of the project in accordance with the *Secretary of the Interior's Standards*.

- EComm shall revise the report to address comments by TxDOT and the THC.

The report will comply with the TxDOT “Standards of Uniformity for Non-Archeological Historic-Age Resource Reconnaissance Survey Reports Checklist” (April 2008).

ARCHEOLOGICAL INVESTIGATION

EComm will conduct background research through the Online Texas Archeological Sites Atlas to include recently recorded archeological sites and surveys, National Register-listed sites and State Archeological Landmarks. EComm will also consult other background sources, such as historical maps, soil surveys, the Houston-PALM, and the Geologic Atlas of Texas to determine potential for archeological sites to be impacted by the project.

EComm will then integrate the background information into a research design and scope of work, which will then be submitted to TxDOT-ENV and the Texas Historical Commission (THC) in order to apply for an Antiquities Permit to conduct a field survey of the APE. EComm will conduct a 100% pedestrian survey of the APE. Archeologists will excavate up to 150 shovel tests on both sides of the road in support of the project. It is assumed that due to low potential for deeply buried archeological sites within the APE a pedestrian inspection supplemented by shovel testing within the proposed new right-of-way (ROW) would satisfy requirements of Section 106 and the Antiquities Code of Texas. The results of the survey will be compiled into a professional report and submitted to TxDOT-ENV and the THC for review. Once approved, EComm will prepare 25 copies of the final report for TxDOT, and additional copies for the Client's records. The APE for archeological resources is assumed to be the existing and proposed new ROW for the undertaking.

Task 9 – Indirect and Cumulative Impact Analyses:

Prepare an analyses and evaluation of the potential indirect and cumulative impacts associated with the proposed project. The analyses will be based on the processes recommended in the *National Cooperative Highway Research Program (NCHRP) Report 466, Desk Reference for Estimating Indirect Effects of Proposed Transportation Projects* (National Research Council, 2002), *NCHRP for Project 25-25 Task 22, Forecasting Indirect Land Use Effects* (NCHRP 2007), and TxDOT's Revised Guidance on Preparing Indirect and Cumulative Impact Analyses dated June 2009.

Task 10 – Environmental Justice

Conduct environmental justice analysis with special emphasis on tolling. The analysis will be conducted in accordance with FHWA and TxDOT Joint Guidance for Project and Network Level Environmental Justice, Regional Network Land Use, and Air Quality Analyses for Toll Roads dated April 23, 2009.

Task 11 – Other Environmental Studies, Analyses and Investigations:

Conduct other environmental studies, analyses and investigations in accordance with FHWA/ TxDOT requirements for this type of highway improvement project. The other environmental studies, analyses and investigations will include the following: land use, farmlands, social,

economic, displacements/relocations, water quality, floodplains, vegetation inventory, aesthetics and construction.

Task 12 – Prepare Draft EA:

Twelve (12) copies of the Draft EA will then be prepared and submitted to Fort Bend County, TxDOT, and FHWA on paper and a digital file in Microsoft Word for review and comment. This task will also include revising the Draft EA in accordance with comments received from Fort Bend County, TxDOT's Houston District Office, TxDOT's ENV, and FHWA. One round of comments from Fort Bend County and TxDOT's Houston District Office and two rounds of comments from ENV and FHWA are assumed as part of the scope. Any additional rounds of comments would be covered by a supplemental agreement.

Task 13 –Public Hearing:

Notice Affording the Opportunity for Public Hearing (NAOPH)

The Engineer will prepare and publish a NAOPH after FHWA has determined the EA to be satisfactory for further processing. The NAOPH will be submitted to the County, Houston District and ENV for approval prior to publication. The NAOPH will be published in a major newspaper, a local newspaper and a Spanish newspaper. The Engineer will be responsible for advertising costs.

The Engineer will mail letters containing the NAOPH to all adjacent property owners. The Engineer will also prepare public official letters to be sent by the State via certified mail.

If no requests for a public hearing are received, the Engineer will prepare a Certification of Public Hearing, for submittal to ENV, stating that an opportunity was afforded and no requests were received.

If requests for a public hearing are received and if the concerns of the requestors cannot be satisfied, the Engineer will coordinate a public hearing, which will be addressed in a supplemental agreement.

Task 14– Prepare Final EA:

Any necessary revisions to the draft EA, as a result of the NAOPH process under Task 12, will be incorporated. Upon approval of the draft copies, (12) twelve copies of the final EA will be prepared and submitted for approval on paper and, if necessary, a digital file in Microsoft Word. One round of comments from Fort Bend County, TxDOT's Houston District Office, ENV and FHWA are assumed as part of the scope. Any additional rounds of comments would be covered by a supplemental agreement.

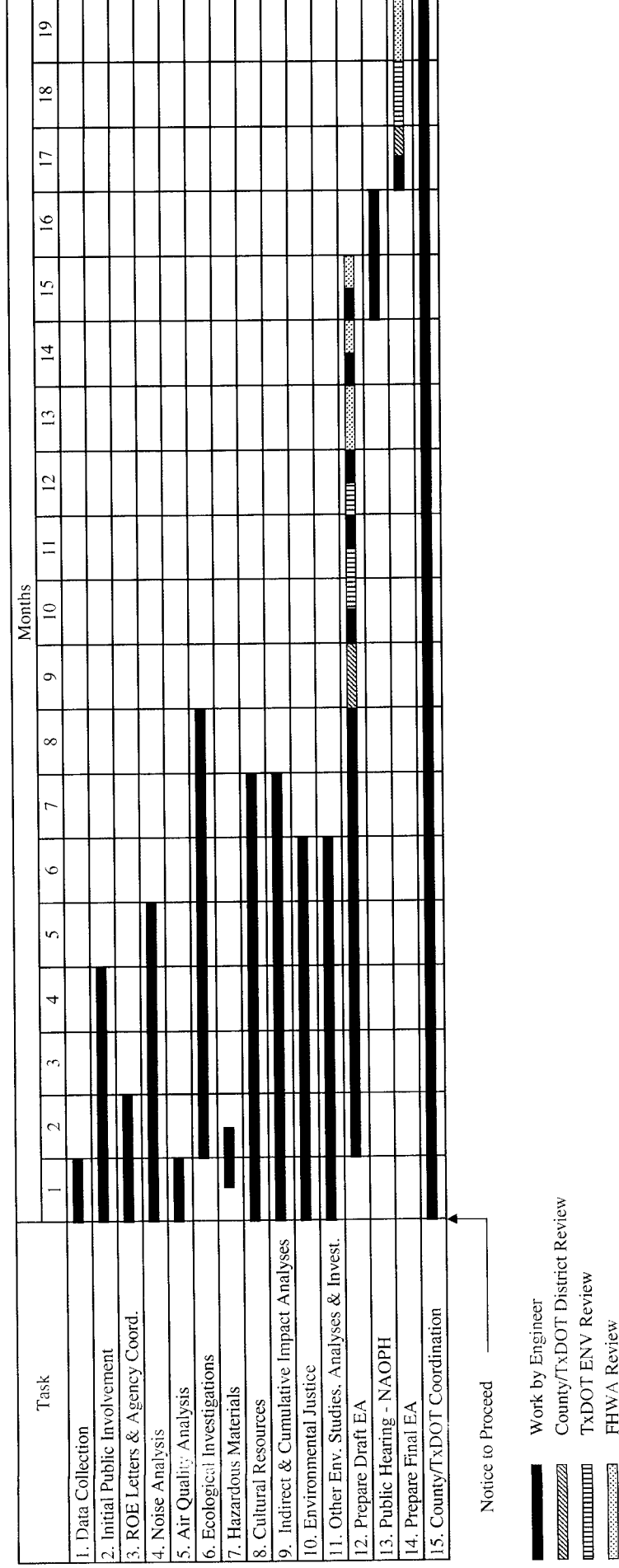
Task 15– County/TxDOT Coordination

Coordinate with the County, TxDOT's Houston District, ENV, and FHWA throughout the environmental process to ensure seamless communication of this project between the Engineer, EComm, County, TxDOT, and FHWA and timely review and approval.

The Engineer shall obtain from others the proposed design schematic, tolling analysis, and existing and projected traffic data. Traffic data is necessary to complete the noise analysis as well as other parts of the EA.

This Scope of Services does not include the preparation of a tolling analysis, Section 4(f) Evaluation (required for taking parkland, recreation land, historic sites), Formal or Informal Section 7 Consultation with the USFWS, Biological Assessment/Biological Evaluation (associated with endangered species/habitat impacts), a quantitative MSAT analysis, compliance with *NCHRP for Project 25-25 Task 36, Recurring Community Impacts* (NCHRP 2008) analysis, USCG Section 9 permit, USACE Section 10 permit, USACE 404 Individual Permit or any mitigation designs or plans associated with Section 404 permitting. A detailed noise barrier analysis outside of TxDOT ROW and any noise workshops are not included in this scope. Should any of these services be determined necessary, the Engineer will perform the associated work as an additional service.

Attachment C - Work Schedule
FM 1093 (Westpark Tollway Extension): SH 99 to James Lane - Environmental Assessment
December 31, 2009



Note: The above schedule is contingent upon the above review times and the schematic showing plan and profile being available at Notice to Proceed and the tolling analysis being provided within three months following Notice to Proceed.