

ARF-3156

**REGULAR SESSION AGENDA**

Date: 03/08/2011

CC-3-8-2011PateEngineersAmendment2

**Submitted For:** Paulette Shelton**Submitted By:**Dalia Sister, Public  
Transportation

Public Transportation

26

**Department:** Public Transportation**Type of Item:** Consent**Renewal** Yes**Agreement/****Appointment:****Reviewed by** Yes**County****Attorney's Office:****Multiple Originals****Y/N?:**

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**Information****SUMMARY OF ITEM**

Approve Amendment #2 to Engineering Services Agreement between Fort Bend County and Pate Engineers, Inc. to provide design modification and related structural analysis including a revised fee schedule.

**SPECIAL HANDLING**

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**Fiscal Impact****ACCTG UNIT or GRANT/PROJ NAME:** 2007 Allocation of Urban 5307 Grant**ACCT NAME or GRANT/PROJ ACTIVITY:** 2007 Allocation of Urban 5307**BUDGETED Y/N:****FISCAL SUMMARY:**

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**Attachments**Link: [CC-3-8-2011PateEngineersAmendment2.pdf](#)

3/14/11 2 originals returned to Dalia at Public Transportation

STATE OF TEXAS           §  
                                  §  
COUNTY OF FORT BEND §

**AMENDMENT NO. 2 TO ENGINEERING SERVICES AGREEMENT**

**THIS AMENDMENT**, is made and entered into by and between Fort Bend County, a body corporate and politic, (hereinafter "County"), and Pate Engineers, Inc., (hereinafter "Engineer"), a corporation authorized to conduct business in the State of Texas.

**THAT WHEREAS**, the parties executed and accepted that certain Engineering Services Agreement dated May 6, 2008, as amended on June 1, 2010, (hereinafter "Agreement"), attached hereto as Exhibit A and incorporated by reference herein for all purposes;

**WHEREAS**, the parties desire to amend the Agreement to include additional services and a revised Fee Schedule.

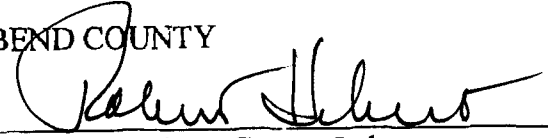
**NOW, THEREFORE**, the following changes are incorporated as if a part of the original Agreement:

1. Attachment A, Scope of Services to the Agreement, Phase III- Park and Ride Design, shall be amended to include the following additional task: "Provide design modifications for canopy footprint and additional structural analysis and design associated with modified canopy column spacing and overhang dimensions. Coordinate with sub-consultants."
2. Attachment B, Fee Schedule to the Agreement shall be replaced with a new Fee Schedule, attached hereto as Exhibit B.
3. Section 2(a) of the Agreement shall be amended to read as follows: "The Maximum Compensation for the performance of services within the Scope of Services described in Attachment A is \$107,400. In no case shall the amount paid under this Agreement exceed the Maximum Compensation without an approved change order."

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

FORT BEND COUNTY

By:

  
Robert E. Hebert, County Judge

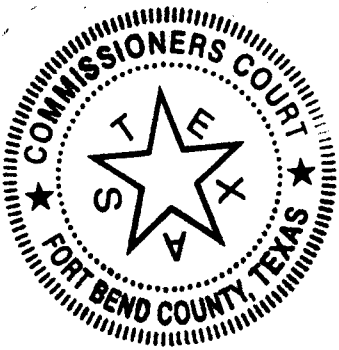
Date: 3-8-2011

**AUDITOR'S CERTIFICATE:**

I hereby certify that funds are available in the amount of \$107,400 to accomplish and pay the obligation of Fort Bend County under this Amendment.

By:

  
Ed Sturdivant, Fort Bend County Auditor



ATTEST:

By: \_\_\_\_\_

*Dianne Wilson*  
Dianne Wilson, County Clerk

Date: \_\_\_\_\_

*3-8-11*

PATE ENGINEERS, INC.

By: \_\_\_\_\_

*Jeff E. Ross*  
Authorized Agent- Signature

*JEFF E. ROSS*  
Authorized Agent- Printed Name

Title: \_\_\_\_\_

*SR VICE PRESIDENT*

Date: \_\_\_\_\_

*3/1/11*

# **EXHIBIT A**

STATE OF TEXAS       §  
                                  §  
COUNTY OF FORT BEND §

**AMENDMENT TO ENGINEERING SERVICES AGREEMENT**

**THIS AMENDMENT**, is made and entered into by and between Fort Bend County, a body corporate and politic, (hereinafter "County"), and Pate Engineers, Inc., (hereinafter "Engineer"), a corporation authorized to conduct business in the State of Texas.

**THAT WHEREAS**, the parties executed and accepted that certain Engineering Services Agreement dated May 6, 2008, attached hereto as Exhibit A, and incorporated by reference herein for all purposes;

**WHEREAS**, the parties desire to amend the Engineering Services Agreement to include a revised Fee Schedule.

**NOW, THEREFORE**, the following changes are incorporated as if a part of the original Engineering Services Agreement:

The Attachment B, Fee Schedule to the Engineering Services Agreement shall be replaced with a new Fee Schedule, attached hereto as Exhibit A.

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

FORT BEND COUNTY

By: 

Robert Hebert, County Judge

Date: June 1, 2010

ATTEST:

By: 

Dianne Wilson, County Clerk

Date: 6-1-10

PATE ENGINEERS, INC.

By: 

Authorized Agent- Signature

JEFF E. ROSS

Authorized Agent- Printed Name

Title: SR Vice President

Date: 1 June 2010

# EXHIBIT A

**Fee Schedule**

**Phase I- SH36 Improvements**

Items 1-4	\$11,500
Items 5-6	\$5,700
Item 7	\$4,200

**Phase II- Park and Ride Planning**

Item 1-6	\$20,600
Item 7	\$6,500

**Phase III- Park and Ride Design**

Items 1-9	\$45,300
Items 10-11	\$5,600

## **ENGINEERING SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into by and between Fort Bend County, Texas, (hereinafter "County"), a body corporate and politic, and Pate Engineers, Inc., (hereinafter "Engineer"), a corporation authorized to conduct business in the State of Texas.

### **WITNESSETH**

WHEREAS, County desires to enter into an agreement for the performance by Engineer of professional engineering and surveying services related to the Fort Bend County Park & Ride (hereinafter "the Project");

WHEREAS, County has determined that this Agreement is for professional engineering services and therefore exempt from competitive bidding under Chapter 2254, Government Code; and

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

### **AGREEMENT**

#### **1. General**

- a. Engineer shall render professional services for County related to the Project as defined in the Scope of Services in Attachment A.
- b. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of Engineer's profession practicing under similar conditions at the same time and in the same locality.

#### **2. Compensation and Payment**

- a. The Maximum Compensation for the performance of services within the Scope of Services described in Attachment A is \$103,500.00. In no case shall the amount paid under this Agreement exceed the Maximum Compensation without an approved change order.
- b. All performance of the Scope of Services including changes in the contractual scope of work and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County. Payment will be made on the basis of project completion certification and in accordance with those payment procedures set forth in subparagraph c. below.
- c. It is understood and agreed that monthly payments will be made to Engineer by the County based on the following procedures: On or about the fifteenth day of each month during the performance of services hereunder and on or about the eighth day of the month following completion of all services hereunder, Engineer



shall submit to County two (2) copies of invoices showing the amounts due for services performed during the previous month, set forth separately for work under this Agreement, accompanied by a progress report indicating the percent complete for the schedule of values describing the tasks described by the scope of work in a form acceptable to County. County shall reserve the right to withhold payment pending verification of satisfactory work performed. 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. County shall pay each such approved invoice within thirty (30) calendar days. Final Payment does not relieve Engineer of the responsibility of correcting errors and/or omissions resulting from its negligence.

3. Time of Performance

- a. Engineer agrees to complete the services identified as Phase I and Phase II in Attachment A of this Agreement within ninety (90) calendar days of receipt of Notice to Proceed, unless such time is extended in writing by County. Any extension of such time will be at the sole discretion of County.
- b. Engineer agrees to complete the services identified as Phase III in Attachment A of this Agreement within one hundred and twenty (120) calendar days of receipt of Notice to Proceed, unless such time is extended in writing by County. Any extension of such time will be at the sole discretion of County.
- c. Tasks described under written Work Authorizations shall be completed in accordance with the schedules provided in said Work Authorizations or within such additional time as may be extended by County

4. County's Option to Terminate

- a. County has the right to terminate this Agreement at its sole option at any time, with or without cause, by providing 30 days written notice of such intentions to terminate and by stating in said notice the "Termination Date" which shall be not less than 30 days later than the actual receipt of such written notice by Engineer. Upon such termination, County shall compensate Engineer in accordance with paragraph 2, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Engineer's final invoice for said services will be presented to and paid by County in the same manner set forth in paragraph 2.c., above.
- b. If County terminates this Agreement as provided in this Paragraph, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Engineer.
- c. County's rights and options to terminate this Agreement, as provided in any provision of this Agreement shall be in addition to, and not in lieu of, any and all rights, actions and privileges otherwise available under law or equity to County by virtue of this Agreement or otherwise. Failure of County to exercise any of its

said rights, actions, options or privileges to terminate this Agreement as provided in any provision of this Agreement shall not be deemed a waiver of any rights, actions or privileges otherwise available under the law or equity with respect to any continuing or subsequent breaches of this Agreement or of any other standard of conduct set by common law or statute.

- d. A reproducible copy of all completed and partially completed documents prepared under this Agreement shall be delivered to County within 30 days or upon Engineer's receipt of termination payment, whichever is sooner, when and if this Agreement is terminated.

5. Ownership of Documents

- a. 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 subject to all of the following terms and conditions; provided, however, County shall not own and shall have no right to receive any documents not deemed "final" by Engineer until termination of this Agreement. Engineer will deliver the Documents to County within 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.
- b. County shall also be the owner of all intellectual property rights of the services rendered hereunder, including all rights of copyright therein. It is the intention of Engineer and County that the services provided are a "work for hire" as the term is used in the federal Copyright Act. Moreover, Engineer hereby agrees to assign, and by these presents, does assign to County all of Engineer's worldwide right, title and interest in and to such work product and all rights of copyright therein. All Instruments of Service produced under this agreement are for exclusive use of the County for specific application to this project.
- c. Engineer agrees that all trademarks, trade names, service marks, logos, or copyrighted materials of County that Engineer is permitted to use in connection with the services will not be used without County's consent and shall remain in the sole and exclusive properties of County and this Agreement does not confer upon Engineer any right or interest therein or in the use thereof.

6. Personnel, Equipment, and Material

- a. Engineer represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Engineer shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment, to perform the Scope of Services when and as required and without delays. Engineer shall submit written notification of all key Engineer personnel changes. County shall have

approval of appointment of all Key Personnel. For the purpose of this agreement, key Engineer personnel are defined as: Scott A. Owen, P.E. Services described in this Agreement shall be performed under the direction of an engineer licensed to practice professional engineering in the State of Texas.

- b. All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Engineer who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the Project shall, upon request of County, immediately be removed from association with the Project.
- c. Except as otherwise specified, Engineer shall furnish all equipment, transportation, supplies, and materials required for its operation under this Agreement.

7. Independent Contractor

- a. 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 or, where permitted, of its subcontractors.
- b. 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.

8. Items to be furnished to Engineer by County

The following items will be supplied to Engineer:

- a. Copies of preliminary studies by others.
- b. Assistance in coordination with all utility companies.
- c. Assistance in coordination with all public and governmental entities.

9. Subletting

Engineer shall not sublet, assign, or transfer any part of its rights or obligations in this Agreement without the prior written approval of County. Responsibility to County for sublet work shall remain with Engineer.

10. Conference

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.

11. Appearance as Witness

If requested by County, or on its behalf, Engineer shall prepare such engineering exhibits and plans as may be requested for all hearings and trials related to the Project and, further, it shall prepare for and appear at conferences at the office the County Judge and shall furnish competent 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. Trial preparation and appearance by Engineer in courts regarding litigation matters are Additional Services.

12. Compliance with Laws

Engineer shall comply with applicable 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 County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

13. Insurance

- a. Engineer shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth below.
- b. Prior to commencement of service, 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 service. The required insurance shall be and the types and amounts as provided below:
  - (i) Workers' Compensation insurance in accordance with the laws of the State of Texas..
  - (ii) Employers' Liability insurance with limits 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.
  - (iii) 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 the liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

- (iv) Business Automobile Liability coverage with a combined bodily injury/property damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
- (v) Professional Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.
- c. If coverage required 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 that work under this Agreement is completed.
- c. All liability insurance policies shall name County as an additional insured. Furthermore, the workers compensation and liability insurance carriers shall grant a waiver of subrogation in County's favor.

#### 14. Indemnification

With respect to claims brought by third parties against either Engineer or County relating to the property or facilities with respect to which this Agreement pertains, Engineer and County agree as follows:

- a. **ENGINEER WILL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS DIRECTORS, OFFICERS, AND EMPLOYEES AGAINST ANY CLAIMS, DEMANDS OR CAUSES OF ACTION; AND COSTS, LOSSES, LIABILITIES, EXPENSES AND JUDGMENTS INCURRED IN CONNECTION THEREWITH, INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS, BROUGHT BY ANY OF ENGINEER'S EMPLOYEES OR REPRESENTATIVES, OR BY ANY OTHER THIRD PARTY, BASED UPON, IN CONNECTION WITH, RESULTING FROM OR ARISING OUT OF THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF ENGINEER.**
- b. In the event that both County and Engineer are adjudicated negligent or otherwise at fault or strictly liable without fault with respect to damage or injuries sustained by the claimant, each shall be responsible for its own costs of litigation and pro rata share of damages as determined by the proceedings.
- c. It is a condition precedent to the Engineer's contractual obligation of indemnification under this Agreement that the County shall provide written notice

of a third party claim, demand or cause of action within 30 days after such third party claim, demand or cause of action is received by the County. It is a further condition precedent to the Engineer's contractual obligation of indemnification under this Agreement that the Engineer shall thereafter have the right to participate in the investigation, defense and resolution of such third party claim.

15. Delivery of Notices, Etc.

- a. All written notices, demands, and other papers or documents to be delivered to County under this Agreement shall be delivered to the Fort Bend County Transportation Department, 12550 Emily Court, Suite 400, Sugar Land, Texas 77478, Attention: Paulette Shelton, or at such other place or places as it may from time to time designate by written notice delivered to Engineer. For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following address: Fort Bend County, 301 Jackson Street, Richmond, Texas 77469, Attention: County Judge.
- b. All written notices, demands, and other papers or documents to be delivered to Engineer under this Agreement shall be delivered to Pate Engineers, 13333 Northwest Freeway, Suite 300, Houston, Texas 77040, Attention: Mr. Scott A. Owen, P.E., or such other place or places as Engineer may designate by written notice delivered to County.

16. Reports of Accidents, Etc.

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), whether or not it results from or involves any action or failure to act by Engineer or any employee or agent of Engineer and which arises in any manner from the performance of this Agreement, Engineer shall send a written report of such accident or other event to County, setting forth a full and concise statement of the facts pertaining thereto. 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.

17. County's Acts

Anything to be done under this Agreement by County may be done by such persons, corporations, or firms as County may designate.

18. 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.

19. Captions Not a Part Hereof

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. Controlling Law, Venue

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.

21. Successors and Assigns

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 the other party, in respect to all covenants of this Agreement.

22. Energy Conservation Requirements

Engineer agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

23. Clean Water Requirements

Engineer agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Engineer agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Engineer also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

24. Lobbying

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts

on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

25. Access to Records and Reports

- a. Engineer agrees to provide the County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Engineer which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. Engineer also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Engineer's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. Engineer agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- b. Engineer agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Engineer agrees to maintain same until County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

26. Federal Changes

Engineer shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between County and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Engineer's failure to so comply shall constitute a material breach of this Agreement.

27. Clean Air

Engineer agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Engineer agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Engineer also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

28. No Government Obligation to Third Parties



County and Engineer acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to County, Engineer, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. Engineer agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

29. Program Fraud and False or Fraudulent Statement and Related Acts

- a. Engineer acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, Engineer certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Engineer further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Engineer to the extent the Federal Government deems appropriate.
- b. Engineer also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Engineer, to the extent the Federal Government deems appropriate.
- c. Engineer agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

30. Disputes

Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of County. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, Engineer mails or otherwise furnishes a written appeal to County. In connection with any such appeal, Engineer shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of County shall

be binding upon Engineer and Engineer shall abide by the decision. Unless otherwise directed by County, Engineer shall continue performance under this Agreement while matters in dispute are being resolved.

31. Government-Wide Debarment and Suspension (Nonprocurement)

- a. This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Engineer is required to verify that none of Engineer, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
- b. Engineer is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- c. By signing and submitting its bid or proposal, Engineer certifies as follows:

The certification in this clause is a material representation of fact relied upon by County. If it is later determined that Engineer knowingly rendered an erroneous certification, in addition to remedies available to County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Engineer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. Engineer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

32. Civil Rights Requirements

The following requirements apply to the underlying contract:

- a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Engineer agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Engineer agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
  - (i) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Engineer agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor

(U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Engineer agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Engineer agrees to comply with any implementing requirements FTA may issue.

- (ii) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, Engineer agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Engineer agrees to comply with any implementing requirements FTA may issue.
- (iii) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Engineer agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Engineer agrees to comply with any implementing requirements FTA may issue.

- c. Engineer also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

33. Access for Individuals with Disabilities.

Engineer agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. Engineer also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits

discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the Recipient agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

- a. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- b. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- c. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- d. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- e. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- f. U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- g. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- h. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- i. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- j. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- k. Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

34. Disadvantaged Business Enterprise (DBE)

- a. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.
- b. Engineer shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Engineer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by Engineer to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as County deems appropriate. Each subcontract Engineer signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

35. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Engineer shall not perform any act, fail to perform any act, or refuse to comply with any County requests which would cause County to be in violation of the FTA terms and conditions.

36. Seismic Safety Requirements

Engineer agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. Engineer also agrees to ensure that all work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

37. Appendices

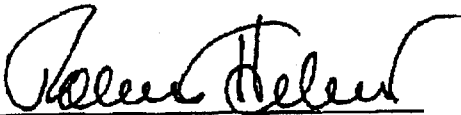
The Appendices attached to this Agreement, which consists of:

- |              |                   |
|--------------|-------------------|
| Attachment A | Scope of Services |
| Attachment B | Fee Schedule      |

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 6 day of May, 2008.

FORT BEND COUNTY

ENGINEER



Robert E. Hebert, County Judge



Company: Pate Engineers Inc.

Name: Jeff E. Ross, P.E.

Title: Senior Vice President

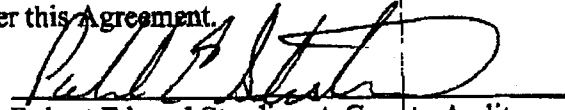
ATTEST:



Dianne Wilson, County Clerk

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of **\$103,500.00** to accomplish and pay the obligation of Fort Bend County under this Agreement.

  
Robert Edward Sturdivant, County Auditor

## **EXHIBIT A**

### **Scope of Services**

#### **Phase I- SH36 Improvements**

1. Prepare a final cost estimate for the proposed improvements.
2. Advise construction manager regarding specification and design for the road improvements and traffic signal.
3. Prepare a storm water pollution prevention plan in accordance with the Texas Pollution Discharge Elimination System (TPDES) as required by the National Pollution Discharge Elimination System (NPDES).
4. Participate in the Preconstruction meeting for the traffic signal and right turn lane.
5. Review contract shop drawings and submittals as needed.
6. Respond to RFI's as needed.
7. Assist County in preparation of required documentation for the force account for the right turn lane.

#### **Phase II- Park and Ride Planning**

1. Assist County in obtaining reimbursement for the preparation of the preliminary engineering report through TxDOT.
2. Prepare preliminary layouts of the park and ride facility for review and approval by County.
3. Coordinate with County and sub-consultants to ensure preliminary layouts function with the intended usages.
4. Assist County in the selection of a prefabricated bus shelter.
5. Prepare conceptual design of the park and ride facility and provide a preliminary cost estimate.
6. Evaluate design for value engineering and discuss alternate solutions with County.
7. Obtain three independent appraisals for the approximate fifteen acres owned by County for County use.

#### **Phase III- Park and Ride Design**

1. Prepare final design plans for the park and ride facility. Final design will include the layout, drainage, landscaping, site lighting, and required details.
2. Prepare a storm water pollution prevention plan in accordance with the Texas Pollution Discharge Elimination System (TPDES) as required by the National Pollution Discharge Elimination System (NPDES).
3. Obtain necessary approvals and signatures for the final design plans by the City of Rosenberg, County, and Fort Bend County Drainage District.
4. Prepare final cost estimates for the park and ride.
5. Prepare technical specifications for the park and ride construction.
6. Assist County during the bidding process.
7. Participate in the prebid meeting.
8. Prepare bid tabulation and make a contractor recommendation based on the results of the bids received.



9. Participate in the preconstruction meeting.
10. Review contract shop drawings and submittals as needed.
11. Respond to RFI's as needed.

#### **Services Not Included**

1. Boundary and topographic surveys are not included in these services. These services have been completed under a previous contract.
2. Platting is not included in the services. These services have been completed under a previous contract.
3. Design of off-site utility and paving extensions are not included in these services.
4. Detention design is not included in these services. These services have been completed under a previous contract.
5. Construction administration services are not included in these services.
6. Pate is not responsible for obtaining permits.
7. Geotechnical investigations, fault studies, Phase I environmental reports, wetland studies, and endangered species investigations are not included in these services.

## **EXHIBIT B**

### **Fee Schedule**

#### **Phase I- SH36 Improvements**

Items 1-4	\$11,500
Items 5-6	\$5,700
Item 7	\$4,200

#### **Phase II- Park and Ride Planning**

Item 1-6	\$20,600
Item 7	\$10,500

#### **Phase III- Park and Ride Design**

Items 1-9	\$39,700
Items 10-11	\$5,600

## **EXHIBIT B**

## **Fee Schedule**

### **Phase I- SH36 Improvements**

Items 1-4	\$11,500
Items 5-6	\$5,700
Item 7	\$4,200

### **Phase II- Park and Ride Planning**

Item 1-6	\$20,600
Item 7	\$6,500

### **Phase III- Park and Ride Design**

Items 1-9	\$53,300
Items 10-11	\$5,600