

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

FIRST AMENDMENT TO
PROFESSIONAL ENGINEERING SERVICES AGREEMENT
TRAMMEL FRESNO ROAD

THIS FIRST AMENDMENT 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 BURK-KLEINPETER, INC., (hereinafter referred to as "Engineer,") authorized to conduct business in the State of Texas.

WITNESSETH

County and Engineer previously entered an Agreement for Professional Engineering Services on February 3, 2012 (hereinafter referred to as the "Agreement") for professional engineering services for certain improvements to Trammel Fresno Road located in Fort Bend County, Texas, hereinafter referred to as the "Project." County and Engineer desire to amend said Agreement as set forth in Engineer's proposal dated July 18, 2012, attached hereto as Exhibit A and incorporated herein by reference as if set forth verbatim.

NOW, THEREFORE, in consideration of the foregoing, the Agreement between County and Engineer is hereby amended to read:

- A. An additional amount not-to-exceed \$82,500.00 shall be available for additional engineering services provided by Engineer in connection with the Project as described in Exhibit A.
- B. Engineer's compensation for the Project shall not exceed \$378,156.00, which includes the original scope of work in an amount not-to-exceed \$295,656.00 and the additional services described in Exhibit A.
- C. No additional funding shall be available for services provided under the Agreement without prior written consent of County.
- D. Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended.
- E. If there is a conflict between this First Amendment and the Agreement, the provisions of this Amendment shall prevail.

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EXECUTION

This Agreement shall become effective upon execution by County.

FORT BEND COUNTY:

Robert E. Hebert

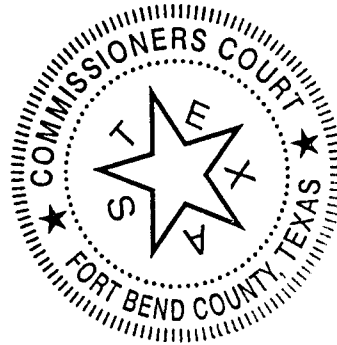
Robert E. Hebert, County Judge

8-7-2012

Date

Attest: *Dianne Wilson*

Dianne Wilson, County Clerk



Approved: COUNTY PROJECT MANAGER

Richard W. Stolleis

Richard W. Stolleis, P.E.
Fort Bend County Engineer

ENGINEER: BURK-KLEINPETER, INC.

Michael G. Jackson

Signature

AUG 8, 2012

Date

Printed Name: MICHAEL G. JACKSON

Title: EXECUTIVE VICE PRESIDENT

Attest:

Kim Sturdivant

MER:Burke Kleinpeter.Trammel Fresno Agr.AMEND

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 378,156.⁰⁰ to accomplish and pay the obligation of the Fort Bend County under this contract.

Ed Sturdivant

Ed Sturdivant, Fort Bend County Auditor

Exhibit A: Proposal from Engineer dated July 18, 2012

EXHIBIT A

CHAIRMAN OF THE BOARD
WILLIAM R. BURK, JR., P.E.
WILLIAM R. BURK, JR., 1912-1986

BURK-KLEINPETER, INC.
ENGINEERS, ARCHITECTS, PLANNERS, ENVIRONMENTAL SCIENTISTS
6420 RICHMOND AVENUE, SUITE 675, HOUSTON, TX 77057
TELEPHONE (713) 892-5901 FAX (713) 892-5908
WWW.BKIUSA.COM

PRESIDENT
GEORGE S. KLEINPETER, JR., P.E.
DIRECTOR
KEN STANLEY, P.E.



OVER 100 YEARS OF SERVICE

July 18, 2012

Richard Stolleis, P.E.
Ft. Bend County Engineer
1124-52 Blaine Road
Rosenberg, TX 77471

Re: Trammel Fresno Road – Project 746
BKI Project 4041
Proposal for Additional Services – USACE Wetlands Individual Permit

Dear Mr. Stolleis:

As requested, I am submitting this proposal for your consideration to perform additional services required to prepare and submit an application for an individual permit to the U.S. Army Corps of Engineers for wetlands impacts on this project. This request is for an increase in the Environmental Documents task fee of \$82,500.00.

The USACE has issued a preliminary wetlands jurisdictional determination for this project indicating that the wetland areas within the project right of way delineated by Berg Oliver Associates, Inc. are considered to be under the jurisdictional control of the Federal government. The impacts to these areas are unavoidable without acquisition of additional right of way and re-alignment of the roadway. This action has been deemed unfeasible and application for the individual permit has been agreed to by all the project authorities as the direction to proceed

Attached is the proposal from our sub-consultant, Berg Oliver Associates, Inc. outlining the scope of work and their fee. BKI will continue the overall environmental document coordination, revision and project management during this process.

The proposed fee for this service is broken down as follows:

Berg Oliver Associates, Inc.	\$75,000.00
BKI	<u>\$7,500.00</u>
Total	\$82,500.00



STATE OF TEXAS • PROFESSIONAL ENGINEERING • EXPIRES 12/31/13



OVER 100 YEARS OF SERVICE

We are prepared to begin this work upon your approval and authorization. If you have any questions or need additional information please let me know.

Sincerely,

Ken Stanley, PE
Director – Houston Operations

cc: files

P:\0000410102 - Construction\Central 4 TR-FBC Prep for Widening 8/07/12\Ken



BAZON DONALD • NEW ORLEANS • WABASH POINT • TULSA • OKLA • WYOMING • MISSOURI • ILLINOIS • INDIANA • OHIO • PENNSYLVANIA • MICHIGAN • WISCONSIN • IOWA • NEBRASKA • MISSOURI • KANSAS • ARIZONA • CALIFORNIA • TEXAS • ALABAMA • GEORGIA • SOUTH CAROLINA • NORTH CAROLINA • VIRGINIA • WEST VIRGINIA • MARYLAND • DELAWARE • DISTRICT OF COLUMBIA • WASHINGTON



BERG ♦ OLIVER ASSOCIATES, INC.

Environmental Science, Engineering & Land Use Consultants
14701 St. Mary's Lane, Suite 400, Houston, Texas 77079
(281) 589-0898 Fax: (281) 589-0007
Houston ♦ Dallas/ Fort Worth ♦ WDBE/HUB ♦ www.bergoliver.com

May 18, 2012

Mr. Ken Stanley
Burk-Kleinpeter, Inc.
6420 Richmond Avenue, Suite 575
Houston, Texas 77057

via email: kstanley@bkusa.com

Re: Proposal for a USACE Individual Permit
BOA Project #7403E

Dear Mr. Stanley:

The following proposal is provided to Burk-Kleinpeter, Inc. for environmental services for approximately 62.84 acres, which includes a 2 mile Right-of-Way and detention areas for Trammel-Fresno Road, located from FM 521 to Fort Bend Parkway, in Fort Bend County, Texas. Berg ♦ Oliver Associates, Inc. (Berg ♦ Oliver) will provide special attention to complete the work in a timely and professional manner. We will begin the assessment upon your acceptance and execution of this proposal.

Berg ♦ Oliver Associates, Inc. is proposing to provide the following service: Task I) U.S. Army Corps of Engineers (USACE) Individual Permit. Attachment A describes this service.

PROJECT SCHEDULE

The Permit is projected to be submitted to the USACE within forty-five (45) calendar days of receipt of authorization to proceed. The permit review process by the USACE normally takes between nine (9) to eighteen (18) months for an Individual Permit. The process begins upon the USACE determination that the application is complete. Upon review of the initial submittal, the USACE may request additional information beyond that listed in the Code of Federal Regulations (CFR) to consider the application complete for processing.

The project completion schedule is the goal of all parties; it does not, however, reflect unusual delays due to forces beyond the control of Berg ♦ Oliver and/or modifications to the scope of work based upon actual findings or additional requests by Burk-Kleinpeter, Inc., its agents, or governmental agency.

Environmental laws, regulations, and policies are in a constant state of change and are subject to differing interpretations by various agencies. Permitting performed by governmental agencies is unpredictable. All time frames given to clients by Berg ♦ Oliver Associates, Inc. regarding the length of time necessary to obtain a permit, or other agency clearances, are estimates and NOT a guarantee. There is also NO assurance that a permit/concurrence will be granted by a government agency. In addition, there is no assurance that the governmental review process will NOT alter the scope of the project, require additional information/studies not originally anticipated, require special meetings, or require

Berg ♦ Oliver Associates, Inc.
BOA project number 7403E
May 18, 2012

additional fees outside of those estimated herein. The client agrees to not hold Berg♦Oliver Associates, Inc. liable for delays or additional information requests by any governmental agency as it attempts to secure a permit or agency clearance while acting on behalf of the client.

RIGHT OF ENTRY

Unless otherwise stated, it is assumed that the client has the authority to enter the property for purposes of conducting environmental assessments and herein grants that authority to Berg♦Oliver.

BASIC COMPENSATION AND METHOD OF PAYMENT

Berg♦Oliver proposes to provide the environmental services described in Attachment A to Burk-Kleinpeter, Inc. on an hourly basis, not to exceed the following amount:

Seventy-Five Thousand Dollars (\$75,000.00) *

** This estimate for an Individual Permit is based upon past experience, and includes 535 hours of Project Management Mapping time. Extraordinary circumstances, such as regulatory agency reviews based upon recent policy changes, may require additional tasks or further detailed analysis not covered in the present scope of work. If this task requires more than a total of 535 hours of Project Management time, the extra hours will be billed hourly as additional services, based on the attached rate schedule, but will not exceed 10% (\$7,500.00) without written approval from the client.*

It is assumed that no MAJOR re-addresses to the permit are presented by the public comment agencies, Texas Commission on Environmental Quality (TCEQ), and/or USACE. If extraordinary circumstances requests for additional details are encountered, this amount will increase significantly and a change order will be submitted to the client as described above. If additional tasks, such as thymogomorph (HGM) Modeling, Indirect and Cumulative Impacts (ICI) Analysis, or Alternative Analysis, are required, the price would dramatically increase. Each new task required would be addressed in a change order.

This cost estimate is valid for a period of six (6) months beyond the date shown below. After six (6) months, cost estimates may change due to fluctuations in fuel, subcontractors, and other sources required to complete the project.

Berg♦Oliver will begin the work described herein upon the execution of this proposal by the client. Invoices for all hourly work will be submitted monthly and will be based upon the attached Rate Schedule in Attachment B. Payment of all invoices is expected within thirty (30) days of the client's receipt of the invoice submitted by Berg♦Oliver. If invoice is not paid in full in thirty (30) days, interest will accrue at 1.5% per month (18% per annum).

Berg♦Oliver Associates, Inc.
BGA project number 7403F
May 18, 2012

CONFIDENTIALITY OF ASSESSMENT

The assessment and all related work and services of Berg•Oliver Associates, Inc. are confidential. Berg•Oliver Associates, Inc. is hereby employed by Burk-Kleinpeter, Inc. pursuant to this contract. Under such contract relationship, all correspondence, written or oral, which relates to the findings of this study are, to the extent permitted by law, strictly confidential between the parties hereto, unless Berg•Oliver Associates, Inc. receives a written request from the client to offer the results of this study to a third party not a part of this agreement/proposal. Environmental assessments may occasionally uncover extremely sensitive findings. It is the responsibility of Berg•Oliver Associates, Inc. to report these findings to the authorizing client and to no other party.

PROPOSAL ACCEPTANCE AND EXECUTION

Acceptance of this proposal, including the "General Conditions for Services" found in Attachment C, will be indicated by the signatures below and will serve as authorization to proceed with the work proposed herein. The signatory below also represents that the client has, or has secured, the authority to grant permission for Berg•Oliver Associates, Inc. personnel to enter the subject property as necessary to conduct these assessments and that such permission is granted to Berg•Oliver Associates, Inc. by the execution of this agreement/proposal. If the client is a Corporation or a Partnership, then the signature below will also represent the personal guarantee of the individual signing on behalf of the Client.

IN WITNESS THEREOF, Burk-Kleinpeter, Inc. and Berg•Oliver Associates, Inc. have accepted and executed this proposal for environmental services on this the _____ day of _____, 2012.

BURK-KLEINPETER, INC.

By: _____
Authorized Signature

BERG•OLIVER ASSOCIATES, INC.

By: 
Shanon Mathis
Project Manager

Berg•Oliver Associates, Inc.
BCA project number 7403E
May 18, 2012

ATTACHMENT A

TASK I
SECTION 404 CLEAN WATER ACT INDIVIDUAL PERMIT
PREPARATION AND COORDINATION
SCOPE OF WORK

Scope of work for the preparation of a Clean Water Act Section 404 Permit and submission to the USACE will follow the criteria set forth in 33 CFR 325 (Individual). A conceptual development plan including profiles must be provided by the client or the client's consulting engineer. Berg ♦ Oliver will utilize these plans to create the required permit submittal drawings in the USACE's preferred format. The USACE may request an alternatives analysis and best management practice information that must be provided to Berg ♦ Oliver from the client or consulting engineer. **This cost estimate is only preliminary and does not take in to account the amount of proposed impacts to wetlands and/or "Waters of the United States." Berg ♦ Oliver cannot predict or guarantee what the agencies will require during the permitting process. It is our experience that the amount of work required is related to the amount of proposed wetlands to be impacted and/or the amount of avoidance and minimization to wetlands.**

Berg ♦ Oliver will perform the following under this task:

1. Draft and submit the Individual Permit application and support documents to the applicant/client for review prior to submittal to the USACE. (Berg ♦ Oliver must have written approval from the client authorizing Berg ♦ Oliver to submit the permit application to the USACE.)
2. Section 401 certification is required for Individual Permits. Berg ♦ Oliver will draft and submit an alternatives analysis to the applicant/client for review prior to submittal to the TCEQ, and a Tier I checklist and/or Tier II questionnaire, whichever is appropriate, upon written approval from the applicant/client. The purpose of this information is to satisfy the regulatory guidelines set forth in Section 401 and Section 404b (1) of the Clean Water Act. Drafting of the alternative analysis is a lengthy process and will require information from the client and engineer. Section 401 certification is a separate coordination effort with the TCEQ and is required prior to the USACE authorizing the Section 404 permit.
3. Attend two (2) on-site meetings with USACE, TCEQ, and resource protection agencies.
4. Attend two (2) additional meetings with the USACE in Galveston and/or the TCEQ in Austin.
5. Consult with the client, engineer, and land planner regarding the site development plan and alternatives.
6. Draft the Public Notice for the USACE, if approved by the USACE Project Manager.
7. Assist the applicant in responding to agency comment letters submitted during the interagency and/or thirty (30) day Public Notice period.
8. Consult with the applicant regarding the Wetland Mitigation Plan and design, if deemed necessary. (If client chooses, Berg ♦ Oliver can prepare the mitigation plan and design under a separate proposal.)
9. Assist the applicant/client in providing the USACE site specific requested information and/or Revised Site Development Plan, if necessary.
10. The Individual Permit process is constantly evolving and may require additional tasks not specified in items 1 through 9 above. If additional tasks are required, Berg ♦ Oliver will provide the client with an additional proposal related to each specific additional task (such as Alternative Analysis, a real estate feasibility analysis, off-site and on-site avoidance alternatives, Indirect and Cumulative Impacts (ICI) Analysis and Hydrogeomorphic (HGM) Modeling).

Berg ♦ Oliver Associates, Inc.
BOA project number 7403F
May 18, 2012

