

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

AGREEMENT FOR PROFESSIONAL COMBINED HEAT & POWER PLANT FEASIBILITY STUDY

THIS AGREEMENT is made and entered 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 Lockwood, Andrews & Newnam, Inc., hereinafter referred to as "Consultant," authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Consultant conduct a professional feasibility study for combined heat and power at the Fort Bend County Jail located at 1410 Williams Way Blvd, located in Richmond, Texas, hereinafter referred to as the "Project;" and;

WHEREAS, Consultant represents that it is qualified and desires to perform such services;

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

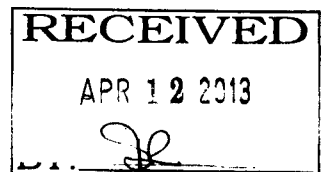
AGREEMENT

SECTION I CHARACTER AND EXTENT OF SERVICES

- 1.01 Consultant shall provided professional services as detailed in Attachment A, proposal from Consultant dated January 11, 2013, attached hereto and incorporated by reference as if set forth herein verbatim for all purposes.
- 1.02 Consultant shall coordinate with County to develop a schedule by which Consultant shall conduct the assessment and provide a written report(s).

SECTION II CONSULTANT'S COMPENSATION

- 2.01 For and in consideration of the professional services rendered by Consultant for the services provided under Attachment A, and subject to the limit of appropriation under Section XIII, County shall pay to Consultant an amount not-to-exceed \$84,460.00, including all expenses.
- 2.02 Consultant shall submit invoices to County as detailed in Section 2.03 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 Consultant to the point indicated by such invoice or of receipt or acceptance by the County of the services covered by such invoice.



- 2.03 Consultant shall submit to County two (2) copies of invoices detailing the amounts due for services performed, set forth separately for work under this Agreement, and accompanied by a progress report 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 County and shall terminate ninety (90) days after execution by County.
- 3.02 Any services provided by Consultant or any costs incurred by Consultant before issuance 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 Consultant.
- 4.02 Upon receipt of such termination notice, Consultant shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts, if any, insofar as such orders or contracts are chargeable to this Agreement.
- 4.03 Within thirty (30) days after receipt of notice of termination, Consultant shall submit a statement, describing in detail the services performed under this Agreement to the date of termination.
- 4.04 County shall then pay Consultant that proportion of the services actually performed under this Agreement that 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, reports, summaries and documents 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 OWNERSHIP AND REUSE OF DOCUMENTS

- 5.01 All documents, including electronic files, correspondence, estimates, specifications, field notes, reports, documents and data created, produced, developed or prepared by Consultant or its approved outside advisory or support consultants (collectively, the "Documents") shall be the property of County.
- 5.02 County shall not be entitled to any Documents not deemed "final" by Consultant until termination of this Agreement.
- 5.03 Consultant 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 Consultant 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 Consultant, which consent will not be unreasonably withheld. Any use of the Documents without the express written consent of Consultant will be at the County's sole risk and without liability or legal exposure to Consultant.

- 5.04 County shall also be the owner of all intellectual property rights of the services rendered hereunder, including all rights of copyright therein. County and Consultant agree that the services provided are a "work for hire" as the term is used in the Federal Copyright Act.
- 5.05 Any trademarks, trade names, service marks, logos, or copyrighted materials of County are permit only for use in connection with the services provided under this Agreement and shall not be used without County's consent and shall remain in the sole and exclusive properties of County.

SECTION VI PERSONNEL, EQUIPMENT, AND MATERIAL

- 6.01 Consultant 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. Consultant 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.
- 6.02 County will approve assignment and release of all key Consultant personnel and Consultant shall submit written notification of all key Consultant personnel changes for the County's approval prior to the implementation of such changes. For the purpose of this agreement, key Consultant personnel are defined in Attachment A, Project Team
- 6.03 All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them to the standard stated in this Agreement and Attachment A. Any employee of the Consultant who, in the opinion of County, is incompetent or by conduct becomes detrimental to the Project shall, upon request of the County, immediately be removed from association with the Project.
- 6.04 Except as otherwise specified herein, Consultant shall furnish all equipment, transportation, supplies, and materials required to provide all services subject to this Agreement.

SECTION VII CONSULTANT'S INSURANCE REQUIREMENTS

- 7.01 Prior to commencement of the providing services for the Project, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, without prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better,

licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- A. Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 - B. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 - C. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 - D. Business Automobile Liability insurance 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.
 - E. Professional Liability insurance with limits not less than \$1,000,000.
- 7.02 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies (except Workers Compensation) written on behalf of Consultant shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
- 7.03 If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; 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 the Agreement is completed.

SECTION VIII INDEMNIFICATION

- 8.02 CONSULTANT SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, CONTRACTORS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES AND FOR WHICH CONSULTANT IS FOUND TO BE LEGALLY LIABLE.
- 8.03 CONSULTANT SHALL ALSO SAVE HARMLESS COUNTY FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY COUNTY, IN

LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES THAT MIGHT BE IMPOSED ON COUNTY AS THE RESULT OF SUCH ACTIVITIES BY CONSULTANT, ITS AGENTS, CONTRACTORS OR EMPLOYEES AND FOR WHICH CONSULTANT IS FOUND TO BE LEGALLY LIABLE.

SECTION IX DISPUTE RESOLUTION

- 9.01 In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, County and Consultant agree to submit the dispute to mediation.
- 9.02 In the event County or Consultant 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 calendar days of the receipt of such notice, such dispute shall be submitted for mediation.
- 9.03 All expenses associated with mediation shall be shared 50 percent (50%) by each party.
- 9.04 The requirement to seek mediation shall be a condition required before filing an action at law or in equity.

SECTION X NOTICE

- 10.01 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 Consultant at the addresses set forth below.
- 10.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 10.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to Consultant: Lockwood, Andrews & Newnam, Inc.
2925 Briarpark Drive, Suite 400
Houston, Texas 77042
Attn: Jon D. Jelinek, Team Leader/Principal-in-Charge

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

Fort Bend County Purchasing Department
Gilbert D. Jalomo, Jr., CPPB
301 Jackson
Richmond, Texas 77469

Facilities Management and Planning Department
Don Brady, Director
301 Jackson
Richmond, Texas 77469

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

SECTION XI REPORTS OF ACCIDENTS

- 11.01 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 Consultant), Consultant 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.
- 11.02 Consultant shall also immediately send County a copy of any summons, subpoena, notice, other documents served upon Consultant, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from Consultant's performance of work under this Agreement.

SECTION XII CONSULTANT'S REPRESENTATIONS AND WARRANTIES

- 12.01 Consultant will perform all services in accordance with the highest professional standards in the industry, and will use its best efforts, skill, judgment, and abilities to provide the products and/or perform the services set forth in this Agreement.
- 12.02 Consultant represents and warrants that it will, at its own cost, correct any errors or omissions in products or services it provides under the Agreement as soon as is practical after Consultant becomes aware of such effects or is notified of such errors or omissions. If Consultant neglects to make good such errors or omissions within a reasonable time after receiving notice requesting such remedial work, then County will be entitled to make good such defective products or services at the expense of Consultant. This commitment by Consultant is in addition to, and not in substitution for, any other remedy for defective products or services that County may have at law or in equity.
- 12.03 Consultant will call to County's attention all information in any computations, models, data, information, requirements, procedures, and all other documentation and materials supplied to Consultant which it regards in its opinion as unsuitable, improper or inaccurate in connection with the purposes for which such documentation or material is furnished. Nothing will excuse or detract from Consultant's responsibilities or obligations under this Agreement in a case where such documentation or material is furnished, unless Consultant advises County in writing that, in its opinion, such documentation or material and any requests made therein for action are unsuitable, improper, or inaccurate, and County confirms in writing that it wishes Consultant to proceed in accordance with the documentation and material as originally provided.
- 12.04 Consultant will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services.
- 12.05 Consultant will use its best efforts to use efficiently all resources or services necessary to provide the services that are required under this Agreement.
- 12.06 Consultant will use its best efforts to perform the services in the most cost-effective manner consistent with the required level of quality and performance.
- 12.07 Consultant will perform the services in a manner that does not infringe the proprietary rights of any third party.
- 12.08 Consultant will perform the services in a manner that complies with all applicable laws and regulations.

- 12.09 Consultant has duly authorized the execution, delivery and performance of this Agreement.
- 12.10 Consultant has not provided any gifts, payments or other inducements to any officer, employee or agent of County.
- 12.11 Consultant shall require its sub-contractor(s), if any, to make the same representations and warranties as contained in this Agreement.

SECTION XIII LIMIT OF APPROPRIATION

- 13.01 Prior to the execution of this Agreement, Consultant has been advised by County, and County 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 \$84,460.00, including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by County for services provided under Attachment A.
- 13.02 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Consultant hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$84,460.00 for services allocated under Attachment A.

SECTION XIV SUCCESSORS AND ASSIGNS

- 14.01 County and Consultant 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.
- 14.02 Neither County nor Consultant shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other.

SECTION XV SUCCESSORS AND ASSIGNS

- 15.01 Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Consultant or its employees or agents in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is furnished by County to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure

under this Agreement; or (d) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

- 15.02 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise County immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Consultant will turn over to County all documents, papers, and other matter in Consultant's possession which embody Confidential Information.
- 15.03 Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.
- 15.04 Consultant in providing all services hereunder agrees to abide by the provisions of any applicable federal or state data privacy act.

SECTION XVI PUBLIC CONTACT

- 16.01 Contact with any media outlet, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of County.
- 16.02 Under no circumstances, whatsoever, shall Consultant 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 XVII MODIFICATIONS

This instrument and Attachment A 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 XVIII
MISCELLANEOUS

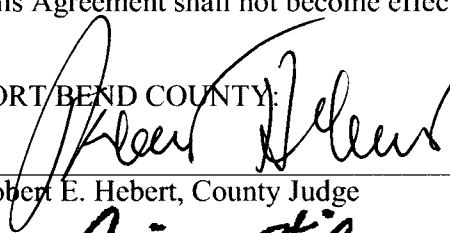
- 18.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 18.02 Nothing contained in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 18.03 Consultant agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve agreements or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve an agreement 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; Consultant and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 18.04 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.
- 18.05 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.
- 18.06 Consultant 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, Consultant shall furnish the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

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SECTION XIX
EXECUTION


This Agreement shall not become effective until executed by County.

FORT BEND COUNTY:


Robert E. Hebert, County Judge


4-23-2013
Date

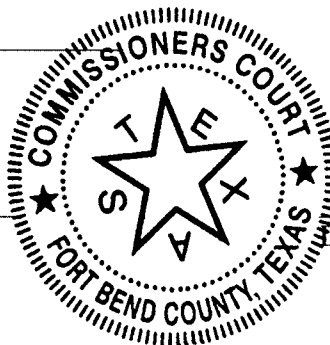
Attest:


Dianne Wilson, County Clerk

APPROVED:

By:

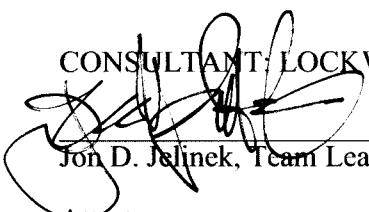

Don Brady, Director
County Facilities Management
& Planning Department



Date

4/12/13

CONSULTANT: LOCKWOOD, ANDREWS & NEWNAM, INC.


Jon D. Jelinek, Team Leader/Principal-in-Charge

Date

4/11/13

Attest:

MER:LAN.Energy Study.FMP.3958

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$84,460.00 to accomplish and pay the obligation of the Fort Bend County under this Agreement.


Ed Sturdivant, Fort Bend County Auditor

Attachment A: Consultant's Proposal dated January 11, 2013

Attachment A



January 11, 2013

Mr. Don Brady
Facilities Management Director
Fort Bend County Facilities Management and Planning
1517 Eugene Heimann Circle Suite 500
Richmond, Texas 77469

**RE: Professional Engineering Services – Combined Heat and Power Plant Feasibility Study
LAN Project Number: 17P-10761-000**

Dear Mr. Brady:

Thank you for your interest in having Lockwood, Andrews & Newnam, Inc. (LAN) provide engineering services for Fort Bend County (FBC). Please allow this letter to serve as our proposal to provide schematic design of a combined heat and power (CHP) plant to the county jail.

SCOPE OF SERVICES

Based on our understanding of the project requirements, LAN will provide the following:

- Drawings at a schematic level showing the CHP Plant and associated interconnecting systems.
- Drawings at a schematic level showing existing and new boiler configurations.
- Drawings showing the future expansion to facilitate powering the entire 40 acre campus and the nearby waste-water treatment plant.
- Design Calculations providing sizes and quantities to facilitate cost estimation.
- Engineers Estimate of probable costs for the initial installation.
- Engineers estimate of probable costs for expanding the installation to cover the entire campus and the nearby waste-water treatment plant.
- Updated Pro-forma based on current utility rates and cost estimates.
- Two progress review meetings with FBC.

COMPENSATION

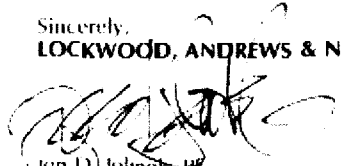
Based on the scope of work outlined above, we propose the following fee: eighty-four thousand four hundred sixty dollars (\$84,460.00) including travel and expenses.

SCHEDULE

Upon notification to proceed, LAN expects to complete the above scope of services per the attached schedule with final draft report being delivered within 90 days after receiving notice to proceed.

We appreciate the opportunity to propose our services. If you have any questions, please feel free to contact the Project Manager, Jeff Thomas at JRThomas@lan-inc.com or call 713.821.0434. You can also reach me at JDlelinek@lan-inc.com or call 713.821.0250.

Sincerely,
LOCKWOOD, ANDREWS & NEWMAM, INC.



Jon D. Leinek, PE
Associate, Facilities Team Leader

cc: File

LOCKWOOD, ANDREWS & NEWMAM, INC.

ACCEPTED BY CLIENT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____