

STATE OF TEXAS §
COUNTY OF FORT BEND §

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BETWEEN FORT BEND COUNTY DRAINAGE DISTRICT AND R.G. MILLER ENGINEERS, INC.

THIS AGREEMENT is made and entered into by and between Fort Bend County Drainage District, (hereinafter "District"), a body corporate and politic under the laws of the State of Texas, and R.G. Miller Engineers, Inc. (hereinafter "Contractor"), an engineer authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, District has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262 of the Texas Local Government Code; and

WHEREAS, District desires that Contractor provide professional engineering services related to the creating a Wetlands Mitigation Bank Preliminary Feasibility Study (hereinafter "Services"); and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

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

AGREEMENT

Article I. Scope of Services

Contractor shall render Services to District as defined in the Scope of Services (attached hereto as Exhibit A).

Article II. Personnel

2.1 Contractor 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 Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of District, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the

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opinion of District, is incompetent or by his conduct becomes detrimental to the project shall, upon request of District, immediately be removed from association with the project.

Article III. Compensation and Payment

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is forty-eight thousand five hundred dollars and no/100 (\$48,500.00). In no case shall the amount paid by District under this Agreement exceed the Maximum Compensation without an approved change order.

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by District.

3.3 District will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to District two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to District. District shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. District shall pay each such approved invoice within thirty (30) calendar days. District reserves the right to withhold payment pending verification of satisfactory work performed.

Article IV. Limit of Appropriation

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that District shall have available the total maximum sum of forty-eight thousand five hundred dollars and no/100 (\$48,500.00), specifically allocated to fully discharge any and all liabilities District may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that District may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed forty-eight thousand five hundred dollars and no/100 (\$48,500.00).

Article V. Time of Performance

Time for performance of the Scope of Services under this Agreement shall begin with receipt of the Notice to Proceed and end no later than one (1) year thereafter. Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the District.

Article VI. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Article VII. Termination

7.1 Termination for Convenience

7.1.1 District may terminate this Agreement at any time upon ten (10) days written notice.

7.2 Termination for Default

7.2.1 District may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the District in writing;

7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to District's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from District specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the District in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, District shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to District. Contractor's final invoice for said services will be presented to and paid by District in the same manner set forth in Section 3 above.

7.4 If District terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Article VIII. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of District upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to District on request.

Article IX. Inspection of Books and Records

Contractor will permit District, or any duly authorized agent of District, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. District's right to inspect survives the termination of this Agreement for a period of four years.

Article X. Insurance

10.1 Prior to commencement of the Services, Contractor shall furnish District 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 District. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by District. Contractor 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. Contractor 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:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. 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.

10.1.2 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.

10.1.3 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.

10.1.4 Professional Liability insurance with limits not less than \$1,000,000.

10.2 District and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of District and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Contractor 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.

Article XI. Indemnity

CONTRACTOR SHALL INDEMNIFY AND DEFEND DISTRICT AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

Article XII. Confidential and Proprietary Information

12.1 Contractor 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 District. Any and all information of any form obtained by Contractor or its employees or agents from District in the performance of this Agreement shall be deemed to be confidential information of District ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor 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 Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

12.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor 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 District hereunder, and to advise each of its employees and agents of their

obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise District immediately in the event Contractor 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 Contractor will at its expense cooperate with District in seeking injunctive or other equitable relief in the name of District or Contractor against any such person. Contractor agrees that, except as directed by District, Contractor 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 District's request, Contractor will promptly turn over to District all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

12.3 Contractor 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 District that is inadequately compensable in damages. Accordingly, District 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. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of District and are reasonable in scope and content.

12.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Contractor expressly acknowledges that District is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, District will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to District by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

Article XIII. Independent Contractor

13.1 In the performance of work or services hereunder, Contractor 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 contractor or, where permitted, of its subcontractors.

13.2 Contractor 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 District and shall not be entitled to any of the privileges or benefits of District employment.

Article XIV. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

Drainage District: **Fort Bend County Drainage District**
PO BOX 1028
Rosenberg, Texas 77471

With a copy to: **Fort Bend County**
Attn: County Judge
301 Jackson Street, Suite 719
Richmond, Texas 77469

Contractor: **R.G. Miller Engineers, Inc.**
16340 Park Ten Place, Suite 350
Houston, TX 77084

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Article XV. Compliance with Laws

Contractor 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 by District, Contractor shall furnish District with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Article XVI. Performance Warranty

16.1 Contractor warrants to District that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

16.2 Contractor warrants to District that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

Article XVII. Assignment

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Article XVIII. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Article XIX. Successors and Assigns

District and Contractor 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.

Article XX. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Article XXI. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Article XXII. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of District. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of District, except where required to do so by law.

Article XXIII. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Article XXIV. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

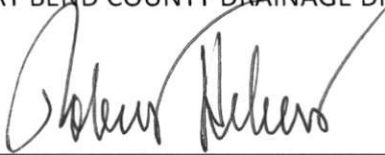
Execution Page Follows

EXHIBIT A

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 26 day of May, 2015.

FORT BEND COUNTY DRAINAGE DISTRICT

R.G. MILLER ENGINEERS, INC.



Robert E. Hebert,
County Judge


Authorized Agent- Signature

ATTEST:



Fred Bauhof
Authorized Agent- Printed Name

Executive Vice President
Title

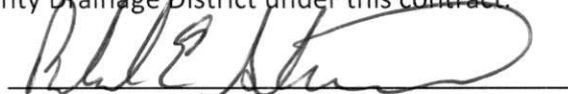


Laura Richard, County Clerk

5/12/15
Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 48,500⁰⁰ to accomplish and pay the obligation of the Fort Bend County Drainage District under this contract.


Robert Edward Sturdivant, County Auditor



April 30, 2015

Mark Vogler, P.E.
Director, Fort Bend County Drainage District
P.O. Box 1028
Rosenberg, TX 77471

RE: Revised Proposal to Conduct a Wetlands Mitigation Bank Preliminary Feasibility Study

Dear Mr. Vogler:

Public infrastructure projects and private land development projects in Fort Bend County are increasingly unable to avoid impacts to jurisdictional wetlands. If impacts to a jurisdictional wetland cannot be avoided a Clean Water Act (CWA) Section 404 permit issued from the US Army Corps of Engineers (USACE) is required. Wetlands permitting can drastically delay project completion and can increase project costs. The planning, permitting, and design of a wetland mitigation bank may be one mechanism to help minimize cost increases and time delays on future projects.

A wetland mitigation bank is a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, or enhanced to generate saleable credits to other parties who have impacted resources in their projects under a Section 404 permit. In general, a mitigation bank sells compensatory mitigation credits to permittees whose permit obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

R. G. Miller Engineers, Inc. (RGME) is pleased to submit this proposal, which outlines the scope of services and estimated costs associated with a preliminary feasibility study of the development of a Fort Bend County wetland mitigation bank to facilitate public infrastructure and private land development projects.

Task 1: Market Evaluation

There are currently operating banks that can provide mitigation for projects in Fort Bend County. These include: the Coastal Bottomlands Bank, the Lower Brazos River Mitigation Bank, and Katy Prairie Stream Mitigation Bank, and the Spellbottom Mitigation Bank. A market evaluation will be conducted to determine the service areas (geographic coverage area) of the existing banks, the amount and nature of credits available from each, and the cost of these credits. RGME will interview the operators of each of

the four banks to obtain and confirm relevant information. If possible, the supply and cost of existing credits will be projected over 5, 10, 15, and 20 year time horizons. The credit supply projection will be compared to the anticipated market demand for credits.

A demand projection will be developed by overlaying future land use projections (from the Houston-Galveston Area Council), future county road construction projects, and unbuilt roadways appearing in the major thoroughfare plan on top of the National Wetlands Inventory map and the stream centerline map to estimate the number of acres and the types of wetlands and streams that may be impacted from the construction of future projects. It is assumed that Fort Bend County will furnish geographic information system (GIS) files for county road projects to support this task. This projection may be refined if future projects can be grouped into different time horizons. The demand projection will seek to provide the area and types of impacts anticipated in the next 5, 10, 15, and 20 years. RGME will provide draft exhibits and information to the county in digital formats at the completion of this task.

Task 2: Site Selection

Mitigation credits are typically only available when the project site and the mitigation site are in the same (or at least neighboring) watershed. Since Fort Bend County is spread over four separate watersheds, mitigation bank facilities will very likely be required in more than one watershed, depending upon the location of credit demand. Mitigation credits are likely to be required in the Buffalo-San Jacinto Watershed, the Austin-Oyster Creek Watershed, the Lower Brazos Watershed, the West Galveston Bay Watershed, and the San Bernard Watershed. Note that some of these watersheds already have either a stream mitigation bank, a wetland bank, or both.

The quality of environmental resources on potential sites will directly impact the number of credits that the site can generate. Sites with little to no environmental resources have the highest potential to generate credits through restoration and site improvements. Sites with existing wetlands and environmental resources have little to no potential to generate credits, since the natural resources already exist. Generally, a smaller number of credits may be available through the preservation of existing natural resources.

Fort Bend County has had preliminary discussions with the George Ranch Foundation, the Moore Estate, and Twinwood Development; large land owners that may be interested in the development of mitigation bank facilities on their land. RGME will work with these land owners to identify how mitigation bank facilities might be compatible with their respective master plans and to validate their level of interest in hosting these types of facilities. RGME will estimate the boundaries of the service areas that would result if bank facilities were developed on these properties. RGME will also talk with the Bayou Land Conservancy about the project to gauge their interest in serving as the conservation easement holder and to exchange information.

RGME will conduct a preliminary desktop site selection effort. The effort will consider the geography and timing of market demand; the existing supply of mitigation credits; the service areas (watersheds) of the existing mitigation credit supply; the anticipated cost of land; the service area coverage provided by banks located on land owned by the George Ranch Foundation, the Moore Estate, or Twinwood Development, available water source; the existing environmental resources on potential sites; and projected future land

use. RGME will consider low quality sites, such as sand mining sites, as potential locations. RGME will provide draft exhibits and information to the county in digital formats at the completion of this task.

Task 3: Operational Structure

The Texas Natural Resource Code (Title 12, Chapter 221, Subchapter A) provides authority to counties adjacent to a county with a population of 3.3 million or more (Harris County) to create and operate a wetland mitigation bank. The law explicitly authorizes the creation of wetland mitigation banks, however, the law is silent on the creation of stream mitigation banks. The law provides broad powers and authorizes eligible political subdivisions to finance, plan, permit, design, build, and operate a wetlands mitigation bank through hired consultants and agents.

RGME will interview seven key contacts within Fort Bend County Drainage District, Fort Bend County Engineering, County Attorney and the offices of each county commissioner and the Judge to identify key concerns and issues related to program management and structure. RGME will document the results of the interviews, evaluate up to three program management and structure options. RGME will summarize the results of the effort and recommend the most favored approach. RGME will provide draft exhibits and information to the county in digital format at the completion of this task.

Task 4: Program Cost Estimate

RGME will develop a cost estimate for the program necessary to finance, plan, permit, design, build, and operate the required number of wetland or stream mitigation banks (or other types as appropriate). The estimate will include field work to finalize site selection and all other phases of the program. RGME will provide draft tables and information to the county in digital formats at the completion of this task for review.

Task 5: Report and Briefing Slides

The results of each of the tasks described above will be documented in a written report. A draft version of the report will be provided to the County in pdf file format electronically. RGME will address county comments and provide the final version of the report in pdf file format electronically. After submittal of the final report, RGME will prepare presentation slides to facilitate briefings to county officials and other interested parties. A draft version of the slides will be provided to the County in pdf file format electronically. RGME will address county comments and provide the final version of the slides in pdf file format electronically.

Fee

The preliminary feasibility study described above will be accomplished for the lump sum amount of \$48,500. RGME plans to execute the work in concert with one or more supporting subconsultants. RGME will obtain County approval for any subconsultants utilized.

Schedule

The work will be accomplished in accord with the schedule presented below:

Task No.	Description	Complete By
1	Market Evaluation	Four weeks after notice to proceed.
2	Site Selection	Six weeks after completion of Task 1.
3	Operating Structure	Four weeks after completion of Task 2.
4	Program Cost Estimate	Four weeks after completion of Task 3.
5	Report and Briefing Slides (Drafts)	Four weeks after completion of Task 4.
	Report and Briefing Slides (Finals)	Two weeks after receipt of county comments.

Terms

We proposed to conduct this work under Fort Bend County's standard professional services contract or purchase order, as appropriate. Please contact Michael Bloom at 281-921-8784 or at mbloom@rgmiller.com if there are any questions about this proposal.

Very truly yours,

R. G. Miller Engineers, Inc.



Michael F. Bloom, P.E., BCEE, ENV SP
Manager, Sustainability Practice



Fred Bauhof, P.E.
Executive Vice President

cc: Commissioner A. Meyers
Commissioner R. Morrison
R. Stolleis, County Engineer