

STATE OF TEXAS                    §  
   §  
COUNTY OF FORT BEND         §

**AMENDMENT TO INTERLOCAL AGREEMENT FOR  
REIMBURSEMENT FOR PROFESSIONAL ENGINEERING SERVICES -  
ADDITION OF CONSTRUCTION PHASE SERVICES, INSPECTIONS AND  
CONSTRUCTION**

This Amendment to an Interlocal Agreement is made and entered into by and between Fort Bend County, acting by and through its Commissioners Court, hereinafter called "County," and Fort Bend County Assistance District No. 2 ("CAD 2"), acting by and through its Board of Directors, both body corporates and politics under the laws of the State of Texas.

**RECITALS:**

WHEREAS, the parties executed the Interlocal Agreement for Reimbursement for Professional Engineering Services on July 14, 2015, (hereinafter "Interlocal Agreement") for design services for the SH 99 at Harlem Road U-Turns and Left Turn Lanes Project - No. X27 and the Mason at Delta Lake Signal Traffic Project, both located within the boundaries of CAD 2; and

WHEREAS, the parties desire to amend the Agreement to add construction phase engineering, inspections and testing, and the cost of construction, (hereinafter "Additional Construction Costs") to the costs to be reimbursed by CAD 2 under the Interlocal Agreement for the Mason at Delta Lake Signal Traffic Project; and

WHEREAS, CAD 2 finds the reimbursement of such additional costs is authorized under Local Government Code Section 387.003; and

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the parties, it is agreed as follows:

1. The Scope of the Work under the Interlocal Agreement shall be amended to include the Additional Construction Costs as described in the Bid Tabulation attached hereto as Exhibit "A" and incorporated herein for all purposes.
2. The Fort Bend County Auditor is hereby authorized to reimburse the County, for Additional Construction Costs for the Mason at Delta Lake Signal Traffic Project, an additional amount not to exceed two hundred fifty-five thousand dollars and no/100 (\$255,000.00).

3. The maximum amount CAD 2 shall be obligated to reimburse County for the Mason at Delta Lake Signal Traffic Project shall be a total amount not to exceed two hundred ninety-eight thousand dollars and no/100 (\$298,000.00), allocated as follows:
  - A. \$43,000.00 under the Interlocal Agreement; and
  - B. \$255,000.00 under this Amendment.
  
4. Except as provided herein, all terms conditions of the Interlocal Agreement shall remain unchanged.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

FORT BEND COUNTY



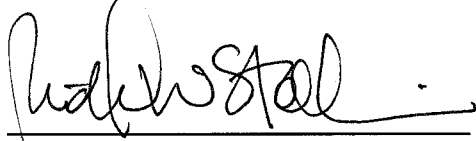
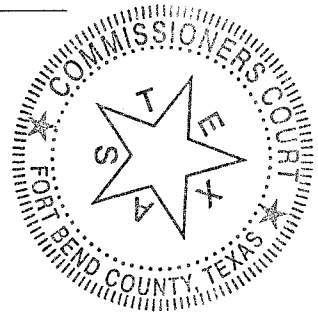
Robert E. Hebert, County Judge

Attest:

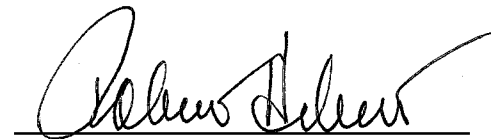


Laura Richard, County Clerk

APPROVED:

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

FORT BEND COUNTY  
ASSISTANCE DISTRICT NO. 2

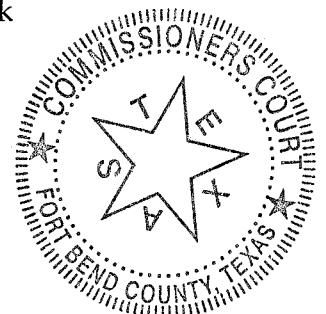


Robert E. Hebert, Director

Attest:

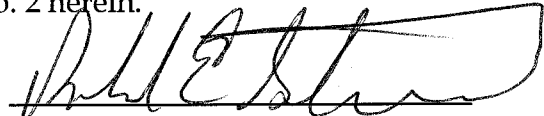


Laura Richard, County Clerk



**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available to accomplish and pay the obligations of Fort Bend County Assistance District No. 2 herein.

A handwritten signature in black ink, appearing to read "Robert Ed Sturdivant", written over a horizontal line.

Robert "Ed" Sturdivant, County Auditor

# EXHIBIT A

CAD 2  
3

STATE OF TEXAS                   §  
  §  
COUNTY OF FORT BEND         §

INTERLOCAL AGREEMENT FOR REIMBURSEMENT FOR  
PROFESSIONAL ENGINEERING SERVICES

This Interlocal Agreement, authorized by Texas Government Code Chapter 791, made and entered into by and between Fort Bend County, acting by and through its Commissioners Court, hereinafter called "County," and Fort Bend County Assistance District No. 2 ("CAD 2"), acting by and through its Board of Directors, both body corporates and politics under the laws of the State of Texas.

RECITALS:

WHEREAS, County desires to engage IDS Engineering Group, Inc. (hereinafter "IDS") to provide professional engineering services for the design of SH U-turns at Harlem Road and pavement widening of Harlem Road for additional left turn lanes, under the Fort Bend County 2007 Mobility Bond Program - SH 99 at Harlem Road U-Turns and Left Turn Lanes - Project No. X27 (hereinafter, "X27 Project"); and

WHEREAS, County desires to engage MBCO Engineering, LLC (hereinafter "MBCO") to provide certain professional engineering services related to the traffic signal design for the intersection of South Mason Road and Delta Lake Drive (hereinafter, "Mason at Delta Lake Signal Traffic Project", collectively with the X27 Project referred to as the "Projects"); and

WHEREAS, CAD 2 has been created to fund, among other things, the construction, maintenance or improvement of certain roads or highways within its boundaries; and

WHEREAS, CAD 2 finds both the intersections of SH 99 at Harlem Road and South Mason Road at Delta Lakes Drive are intersections of streets or roads located within the boundaries of CAD 2, and the construction, maintenance of or improvements to both are authorized under Local Government Code Section 387.003; and

WHEREAS, CAD 2 levies a one percent (1%) sales tax and has determined that the expenditure of sales tax funds for the professional engineering services, (hereinafter, "Services") to promote the Projects serves a public purpose; and

WHEREAS, it is the mutual benefit of the County and CAD 2 to improve the streets and roads within the boundaries of CAD 2 by reimbursing County the costs of Services to be provided by IDS and MBCO.

WHEREAS, provision of Services, and the Projects as a whole, will improve traffic flow/circulation in the service area, and such Projects are desired by the County and CAD 2.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the parties, it is agreed as follows:

1. Period of the Agreement. This Agreement becomes effective on the date signed by the last party and shall remain in effect until both Projects are completed and the County has been reimbursed in full.
2. Scope of Work. The scope of the Services shall be limited to the scope authorized by the County in the Agreement for Professional Engineering Services with IDS, (hereinafter "IDS Services Agreement") attached as Exhibit "A"; and the Agreement for Professional Engineering Services with MBCO, (hereinafter "MBCO Services Agreement") attached as Exhibit "B", both exhibits incorporated by reference as if set forth herein verbatim.
3. County's Responsibilities.
  - A. County is responsible for the administration and management of the Services and completion of the Projects in accordance with all applicable state and federal laws.
  - B. Upon completion of each Project, the County shall issue a "Notification of Completion," acknowledging that the Project has been completed.
4. Reimbursement by CAD 2. The Fort Bend County Auditor is hereby authorized to reimburse the County, for costs incurred by the County under each services agreement, from available CAD 2 sales tax revenues for a total amount not to exceed the respective amounts as follows:
  - A. \$283,300.00 under the IDS Services Agreement, as shown in Exhibit A, and
  - B. \$43,000.00 under the MBCO Services Agreement, as shown in Exhibit B
5. Entire Agreement. This instrument contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by all parties hereto. Attached hereto are Exhibits A and B, which are made part of the Agreement.
6. Termination of this Agreement. This agreement is not subject to termination prior to completion and reimbursement of the Services. Upon completion of the Project and full reimbursement to the County, this Agreement shall be terminated.

7. Legal Construction. In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

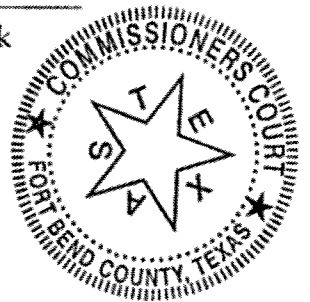
FORT BEND COUNTY

By

  
Robert E. Hebert, County Judge  
July 14, 2015

Attest:

  
Laura Richard, County Clerk




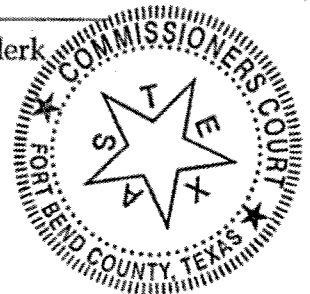
FORT BEND COUNTY  
ASSISTANCE DISTRICT NO. 2

By

  
Robert E. Hebert, Director  
July 14, 2015


Attest:

  
Laura Richard, County Clerk



**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available to accomplish and pay the obligations of Fort Bend County Assistance District No. 2 herein.

  
Ed Sturdivant, County Auditor

# EXHIBIT A

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and IDS Engineering Group, Inc. (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

**WITNESSETH**

WHEREAS, County desires that Contractor provide certain professional engineering services for the design of SH 99 U-turns at Harlem Road and pavement widening of Harlem Road for additional left turn lanes, under the Fort Bend County 2007 Mobility Bond Program – SH 99 at Harlem Road U-Turns and Left Turn Lanes – Project No. X27 (hereinafter "Services") pursuant to SOQ 07-080; 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**

**Section 1. Scope of Services**

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

**Section 2. 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 County, 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

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.

### **Section 3. 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 two hundred eighty-three thousand three hundred dollars and 00/100 (\$283,300.00). In no case shall the amount paid by County 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 County.

3.3 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County staff person designated by the County Engineer, one (1) electronic (pdf) copy and two (2) original hard copies of invoices showing the amounts due for services performed in a form acceptable to County. 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 for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

### **Section 4. Limit of Appropriation**

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of two hundred eighty-three thousand three hundred dollars and 00/100 (\$283,300.00), specifically allocated to fully discharge any and all liabilities County 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 County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed two hundred eighty-three thousand three hundred dollars and 00/100 (\$283,300.00).

### **Section 5. 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 twenty-four (24) months 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 County.

**Section 6. 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.

**Section 7. Termination**

**7.1 Termination for Convenience**

7.1.1 County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

**7.2 Termination for Default**

7.2.1 County 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 County 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 County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County 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 County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County 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 County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County 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.

#### **Section 8. 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 County 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 County on request.

#### **Section 9. Inspection of Books and Records**

Contractor will permit County, or any duly authorized agent of County, 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. County's right to inspect survives the termination of this Agreement for a period of four years.

#### **Section 10. Insurance**

10.1 Prior to commencement of the Services, Contractor 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. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. 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 (or a Claims Made form for Professional Liability insurance) from such companies having Best's 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 may be made on a Claims Made form with limits not less than \$1,000,000.

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

#### **Section 11. Indemnity**

**CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY 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.**

#### **Section 12. 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 County. Any and all information of any form obtained by Contractor or its employees or agents from County 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 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 County 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 County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County 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 County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, 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 County's request, Contractor will promptly turn over to County 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 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. Contractor 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.

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 County 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, County 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 County 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.

**Section 13. 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 County and shall not be entitled to any of the privileges or benefits of County employment.

**Section 14. 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:

County: Fort Bend County Engineering Department  
Attn: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to: Fort Bend County  
Attn: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

Contractor: IDS Engineering Group, Inc.  
Attn: Timothy E. Buscha, P.E., President  
13333 Northwest Freeway, Suite 300  
Houston, Texas 77040

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.

#### **Section 15. 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 County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

#### **Section 16. Performance Warranty**

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

#### **Section 17. 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.

**Section 18. 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.

**Section 19. Successors and Assigns**

County 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.

**Section 20. Third Party Beneficiaries**

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

**Section 21. 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.

**Section 22. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. 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 County, except where required to do so by law.

**Section 23. 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.

**Section 24. Conflict**

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

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 \_\_\_\_ day of \_\_\_\_\_, 2015.

FORT BEND COUNTY

IDS ENGINEERING GROUP, INC.

\_\_\_\_\_  
Robert E. Hebert, County Judge

\_\_\_\_\_  
Travis S. Sellers, P.E., Vice President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

APPROVED:

\_\_\_\_\_  
Richard W. Stolleis, P.E., County Engineer

**AUDITOR'S CERTIFICATE**

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

\_\_\_\_\_  
Robert Edward Sturdivant, County Auditor

MDS

# EXHIBIT A



June 18, 2015

Mr. Richard W. Stolleis, P.E.  
Fort Bend County Engineer  
1124 Blume Road  
Rosenberg, Texas 77471

Reference: Revised Proposal for Professional Engineering and Survey Services for  
Design of U-turns and Pavement Widening at SH 99 and Harlem Road  
IDS Job No: 0570-005-00

Dear Mr. Stolleis:

IDS Engineering Group Inc. respectfully submits this revised proposal for the above referenced project to include the professional engineering and surveying services for the preparation of construction documents for the construction of two (2) U-turns underneath SH 99 at Harlem Road, including widening of Harlem Road underneath SH 99 for the addition of left turn lanes. In general, this project will make improvements to approximately 1,500 linear feet of the existing Harlem Road and approximately 1,000 linear feet of the SH 99 Frontage Road. The project is located within Fort Bend County (FBC) Right-of-Way. The proposed improvements are based upon the funding agreement between Texas Department of Transportation (TxDOT) and FBC. The limits of work and services to be performed are more specifically detailed herein.

The development of construction plans, specifications and construction cost estimate is for the widening of approximately 1,500 feet of Harlem Road, approximately 1,000 linear feet of U-turns, and approximately 500 linear feet for an exclusive U-turn lane on both the eastbound and westbound frontage roads of SH 99. The basic scope of services includes the modification and/or replacement of traffic signals at the intersection of SH 99 and Harlem Road including pedestrian push buttons. It is proposed that the improvements will include removal of the existing storm sewer along Harlem Road and relocating this storm sewer outside the proposed Harlem Road pavement section.

Services will include coordination with the Fort Bend County Engineer's Office, Fort Bend County Toll Road Authority (FBCTRA), and TxDOT on project implementation, identify public and private utility conflicts, and conduct meetings with utility owners to determine relocation options for utilities. IDS will provide technical support to the Fort Bend County Engineer's Office for private utility relocations, consisting of review of construction plans for compatibility with the proposed roadway improvements, attend meetings, and provide design data as requested. Coordinate with TxDOT, FBCTRA and FBC relative to right-of-way access (driveways).

The Scope of Services is summarized below.

**Basic Services – PS&E:**

1. Design Services:
  - a. Conduct project planning and initiation in which project approach is developed, initial project schedule prepared, and initial construction cost estimate made.
  - b. Prepare plan and profile drawings for the proposed roadway and utilities. These drawings will be prepared in accordance to the 2014 TxDOT Standards. Perform field reconnaissance for review of collected survey data and verification of drainage calculations, and other engineering reports created for the project.
  - c. Prepare and incorporate construction drawings for demolition, layout and roadway design, permanent and temporary traffic control, and construction sequencing for Harlem Road and SH 99.
  - d. Prepare construction cost estimate and project specific specifications for use with construction documents.
  - e. Obtain necessary approvals including but not limited to FBCTRA, TxDOT and private utilities and signatures for the bid documents.
  
2. Project Management:
  - a. Inclusive of status meetings and reports prepared at frequency identified by FBC. This item includes the preparation of meeting minutes, design schedule, and monthly status reports.
  - b. Coordinate with CenterPoint Energy, TxDOT, FBC and FBCTRA on use of right-of-way during construction. Provide plan sets for their review and coordinate response to comments with FBC.
  
3. TxDOT Coordination:
  - c. Mini- DCC (Design Concept Coordination) Forms
  - d. Attend DCC meeting, if required by TxDOT
  - e. Submit request and attend TCP Workshop, if required by TxDOT
  - f. Submit PS&E checklist at 50% and 90% milestones
  - g. Submit utility inventory/conflict list/ adjustment date/effect of construction at 50% and 90% milestones
  - h. Schedule and attend 50% Utility Meeting
  - i. Input Construction Cost Estimate into DCIS
  - j. Submit request and attend Safety Review Team Meeting
  - k. Construction Contract Time Determination (Primavera or Suretrack)/Special Provisions for contractors-incentives vs. disincentives
  - l. Schedule and attend 90% Utility Meeting
  - m. Construction Time Determination
  - n. Attend Pre-Letting Utility meeting
  
4. Surveying Services:
  - a. Locate TxDOT control and set control for project.
  - b. Conduct survey services to verify existing Harlem Road and SH 99 right-of-ways and easements.



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- c. Perform topographic survey 1,000 feet north and south of SH 99 right-of-way along Harlem Road and at the intersection of Harlem Road and SH 99.
  - d. Perform topographic survey 1,000 feet east and west of Harlem right-of-way along SH 99 Frontage Road.
  - e. Stake property corners, PC's, PT's, and angle points for project.
  - f. Prepare up to two (2) abstract maps and deed maps.
  - g. Prepare right-of-way maps, metes & bounds descriptions, area calculation sheets, and parcel maps.
5. Traffic Signal Design:
- a. Prepare temporary traffic signal layout per 2014 TxDOT standards for use during construction.
  - b. Prepare traffic signal layout to 2014 TxDOT standards.
  - c. Prepare traffic signal design plans including:
    - i. Quantities per signal
    - ii. Condition diagram
    - iii. Proposed signal layout
    - iv. Signal standards
    - v. Specification for the signals
  - o. Coordination with CenterPoint for signal power source.
6. Drainage Analysis:
- a. Analyze impacts to the existing drainage and detention systems currently in place.
  - b. Provide a letter report with supporting documents to be included in the Preliminary Engineering submittal to TxDOT.
7. Bid and Construction Phase Services:
- a. Provide bid phase services including responding to bidders questions, attending a pre-bid meeting, preparing necessary addenda, attend a bid opening meeting and making recommendation for the successful bidder.
  - b. Provide construction phase services for review of shop drawings, product submittals, and response to RFI's as needed.

**Project Milestones:**

Project Milestone deliverables will include Preliminary Engineering, 50%, 90% and Final Submittals. A draft project schedule is included in Attachment A "Project Schedule."

**Deliverables:**

**Fort Bend County:**

1. Three (3) copies of Preliminary Engineering Submittal
2. Three (3) sets of plans for 50% submittal
3. Three (3) sets of plans for 90% submittal
4. Two (2) compact discs to County's project management consultant at 100%

**TxDOT:**

1. Ten (10) sets of plans with applicable paperwork at 50% submittal



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2. Ten (10) sets of plans with applicable paperwork at 90% submittal
3. Two (2) sets of plans with applicable paperwork at 100% submittal to Houston District Plan Review Section
4. One (1) set of signed and sealed plans for Houston District Plan Review Section's back check with a PDF Portfolio for final approval
5. Final PDF Portfolio and five (5) sets of plans at the final PS&E submittals to Austin

**Excluded Services:**

Services specifically excluded from this proposal are:

- a. Monumentation of right-of-way or preparation of metes-and-bounds descriptions, with the exception of those stated in the above paragraphs.
- b. Any work related to relocation of the pipeline stations located west of SH 99 and South of Harlem Road.
- c. Review of the Contractor's means and methods of construction or safety procedures, which shall remain the sole responsibility of the Contractor.
- d. Construction observation.
- e. Geotechnical Study and Report. Based on the 4-16-2015 meeting with TxDOT, the design can be based off of the Grand Parkway Corridor Wide geotechnical report and soil borings.
- f. Environmental Study Review. TxDOT will provide the draft and final environmental study to the Engineer for review and implementation into the PS&E package. Environmental permit documents will be provided to the Engineer by TxDOT.
- g. Any submittals other than those stated above in the "Project Milestones." Should additional submittals be requested, it will be billed as an additional service. An estimate of additional services will be provided upon request.
- h. Additional meetings with TxDOT, FBC, FBCTRA and private utility company other than those stated above will be billed on an hourly basis not to exceed \$3,000.

**Compensation:**

The preliminary construction cost estimate for the project is \$1,000,000 based upon evaluation of current contractor bid prices. IDS proposes to perform the above described Scope of Services for the fees indicated below.

**Basic Services – PS&E**

Items 1-3:	Design, Project Management, Coordination	\$ 214,000	Fee
Item 4:	Surveying Services	\$ 18,000	Fee
Item 5:	Traffic Signal Design	\$ 33,500	Fee
Item 6:	Drainage Analysis	\$ 8,000	Fee
Item 7:	Bid and Construction Phase Services	\$ 9,800	T&M
<b>TOTAL FEE</b>		<b>\$ 283,300.00</b>	<b>Fee</b>

Basic Services will be performed for the lump sum fee amount shown above, billed monthly based on the percentage of work completed and milestone schedule.



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Mr. Richard W. Stollels, P.E.  
Fort Bend County Engineer  
June 18, 2015  
Page 5

Reimbursable expenses for reproduction and deliveries are included in our basic services fee. Our fee does not include reimbursable expenses such as agency review fees, application fees, and permit fees which will be billed at cost.

We appreciate the opportunity to present this proposal to Fort Bend County. If you need additional information in support of this proposal, please do not hesitate to call us at 713.462.3178.

Respectfully,



Travis S. Sellers, P.E.  
Vice President



Carol D. Harrison, P.E.  
Project Manager

Enclosures

J:\0500\057000500 FBC SH99 at Harlem\200 PROJ MGMT\00 Proposal\Final 2015-06-17\SH99-Harlem Proposal.doc

**Attachment A**  
 SH 99 & Hudson Road Interchange Improvements  
 Draft Project Schedule

ID	Task Name	Duration	Start	Finish	Predecessors	2015	2016	2017	2018
1	Notice to Proceed	0 days	Tue 7/7/15	Tue 7/7/15					
2	Kick-off meeting	0 days	Tue 7/7/15	Tue 7/7/15					
3	Preliminary Engineering	81 days	Tue 7/7/15	Thu 8/24/15	Thu 8/24/15, 18S-2 days				
4	Topographic Survey	18 days	Tue 7/7/15	Fri 7/24/15	Fri 7/24/15, 18S-2 days				
5	Advanced Typical Sections	5 days	Fri 7/24/15	Mon 8/3/15	Mon 8/3/15, 4				
6	Design Analysis	20 days	Tue 7/7/15	Thu 8/6/15	Thu 8/6/15, 1				
7	Coordination with Private Utilities	20 days	Tue 7/7/15	Thu 8/6/15	Thu 8/6/15, 1				
8	Coordination with FDOT	20 days	Tue 7/7/15	Thu 8/6/15	Thu 8/6/15, 1				
9	Coordination with TxDOT	20 days	Tue 7/7/15	Thu 8/6/15	Thu 8/6/15, 1				
10	Coordination with Signalization Sub-contractor	20 days	Tue 7/7/15	Thu 8/6/15	Thu 8/6/15, 1				
11	ME-5/00	5 days	Wed 7/29/15	Thu 8/6/15	Thu 8/6/15, 18S-5 days, 7S-5				
12	Preliminary Cost Estimate	8 days	Wed 7/29/15	Thu 8/6/15	Thu 8/6/15, 4S-5 days, 18S-5				
13	Regulation	1 day	Thu 8/6/15	Fri 8/7/15	Fri 8/7/15, 12				
14	Preliminary Engineering Summary	0 days	Fri 8/7/15	Fri 8/7/15	Fri 8/7/15, 13				
15	Preliminary Engineering Review	30 days	Fri 8/7/15	Thu 9/4/15	Thu 9/4/15, 14				
16	90% Milestone	68 days	Thu 8/24/15	Tue 10/27/15					
17	50% Complete Plan Set	25 days	Thu 8/24/15	Tue 10/27/15	Tue 10/27/15, 15				
18	Coordination with FDOT	22 days	Thu 8/24/15	Tue 10/27/15	Tue 10/27/15, 15				
19	Coordination and Incorporation of Signalization plans	25 days	Thu 8/24/15	Tue 10/27/15	Tue 10/27/15, 15				
20	Coordination with Private Utilities	25 days	Thu 8/24/15	Tue 10/27/15	Tue 10/27/15, 15				
21	Preliminary List of Standard Specifications	25 days	Fri 10/23/15	Wed 11/11/15	Wed 11/11/15, 18S-5 days				
22	Draft Special Specifications and Special Provisions	25 days	Fri 10/23/15	Wed 11/11/15	Wed 11/11/15, 18S-5 days				
23	50% Cost Estimate	3 days	Tue 11/3/15	Fri 11/6/15	Fri 11/6/15, 17S-2, 18, 19				
24	Reproduction	1 day	Wed 11/11/15	Thu 11/20/15	Thu 11/20/15, 24S-2, 23				
25	80% Milestone Submittal	0 days	Thu 11/20/15	Thu 11/20/15	Thu 11/20/15, 25				
26	50% Milestone	25 days	Thu 11/20/15	Tue 12/22/15	Tue 12/22/15, 26				
27	90% Milestone	54 days	Tue 12/22/15	Wed 3/18/16	Wed 3/18/16, 27				
28	Adjustments and Incorporation of Signalization Plans	25 days	Fri 1/23/16	Fri 1/23/16	Fri 1/23/16, 27				
29	Coordination with FDOT	18 days	Thu 1/14/16	Fri 1/23/16	Fri 1/23/16, 28S-10 days, 29				
30	Final Draft of Special Specifications and Special Provisions	10 days	Thu 1/14/16	Fri 1/23/16	Fri 1/23/16, 29				
31	60% Cost Estimate	3 days	Wed 1/28/16	Wed 1/28/16	Wed 1/28/16, 32S-10 days, 30				
32	Reproduction	1 day	Wed 2/2/16	Thu 2/4/16	Thu 2/4/16, 32				
33	80% Milestone Submittal	0 days	Thu 2/4/16	Thu 2/4/16	Thu 2/4/16, 35				
34	50% Milestone	25 days	Thu 2/4/16	Thu 3/10/16	Thu 3/10/16, 36				
35	100% Complete Plans	25 days	Wed 3/16/16	Tue 5/10/16	Tue 5/10/16, 37				
36	Final Adjustments and Incorporation of Signal Plans	20 days	Wed 3/16/16	Fri 4/15/16	Fri 4/15/16, 37				
37	100% Complete Special Specs and Special Provisions	20 days	Wed 3/16/16	Fri 4/15/16	Fri 4/15/16, 37				
38	Final Engineer's Estimate	2 days	Fri 4/15/16	Tue 4/19/16	Tue 4/19/16, 38S-4, 41				
39	Private Utility Signatures	8 days	Fri 4/15/16	Mon 4/25/16	Mon 4/25/16, 41				
40	Agency Signatures	10 days	Mon 4/25/16	Tue 5/10/16	Tue 5/10/16, 42				
41	Submittal of Approved Plans and Specifications	0 days	Tue 5/10/16	Tue 5/10/16	Tue 5/10/16, 44				

Project: SH 99 & Hudson Rd. (14-001)  
 Date: Wed 8/17/15

Task:

Progress:

Milestones:

Summary:

External Tasks:

External Milestone:

Deadline:

EXHIBIT B

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and MBCO Engineering, LLC (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

**WITNESSETH**

WHEREAS, County desires that Contractor provide certain professional engineering services related to the traffic signal design for the intersection of South Mason Road and Delta Lake Drive, in Richmond, Texas, (hereinafter "Services") pursuant to SOQ 14-025; 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**

**Section 1. Scope of Services**

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

**Section 2. 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 County, 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 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.

**Section 3. 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-three thousand dollars and 00/100 (\$43,000.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order. The Maximum Compensation shall be allocated as follows and also described in Exhibit A:

- 3.1.1 \$35,000.00 for Basic Services
- 3.1.2 \$8,000.00 for Additional Services

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 County.

3.3 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County staff person designated by the County Engineer, one (1) electronic (pdf) copy and two (2) original hard copies of invoices showing the amounts due for services performed in a form acceptable to County. 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 for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

**Section 4. Limit of Appropriation**

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of forty-three thousand dollars and 00/100 (\$43,000.00), specifically allocated to fully discharge any and all liabilities County 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 County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed forty-three thousand dollars and 00/100 (\$43,000.00).

**Section 5. 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 October 1, 2016. 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 County.

**Section 6. 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.

**Section 7. Termination**

**7.1 Termination for Convenience**

7.1.1 County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

**7.2 Termination for Default**

7.2.1 County 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 County 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 County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County 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 County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County 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 County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County 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.

#### **Section 8. 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 County 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 County on request.

#### **Section 9. Inspection of Books and Records**

Contractor will permit County, or any duly authorized agent of County, 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. County's right to inspect survives the termination of this Agreement for a period of four years.

#### **Section 10. Insurance**

10.1 Prior to commencement of the Services, Contractor 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. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. 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 (or a Claims Made form for Professional Liability insurance) from such companies having Best's 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 may be made on a Claims Made form with limits not less than \$1,000,000.

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

#### **Section 11. Indemnity**

**CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY 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.**

#### **Section 12. 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 County. Any and all information of any form obtained by Contractor or its employees or agents from County 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 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 County 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 County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County 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 County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, 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 County's request, Contractor will promptly turn over to County 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 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. Contractor 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.

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 County 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, County 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 County 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.

**Section 13. 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 County and shall not be entitled to any of the privileges or benefits of County employment.

**Section 14. 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:

County: Fort Bend County Engineering Department  
Attn: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to: Fort Bend County  
Attn: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

Contractor: MBCO Engineering, LLC  
Attn: Brock Crenek, P.E., Senior Vice President  
13111 Westheimer Road, Suite 307  
Houston, Texas 77077

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.

#### **Section 15. 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 County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

#### **Section 16. Performance Warranty**

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

#### **Section 17. 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.

**Section 18. 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.

**Section 19. Successors and Assigns**

County 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.

**Section 20. Third Party Beneficiaries**

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

**Section 21. 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.

**Section 22. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. 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 County, except where required to do so by law.

**Section 23. 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.

**Section 24. Conflict**

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

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 \_\_\_\_ day of \_\_\_\_\_, 2015.

FORT BEND COUNTY

MBCO ENGINEERING, LLC

\_\_\_\_\_  
Robert E. Hebert, County Judge

\_\_\_\_\_  
Brock Crenek, P.E., Senior Vice President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

APPROVED:

\_\_\_\_\_  
Richard W. Stolleis, P.E., County Engineer

**AUDITOR'S CERTIFICATE**

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

\_\_\_\_\_  
Robert Edward Sturdivant, County Auditor

MDS

# EXHIBIT A

# MBCO Engineering, LLC.

Fort Bend County  
Engineering Department  
301 Jackson St., 4th Floor  
Richmond, TX 77469

June 22, 2015

Attn: Rick Staigle, PE, PTOE; 1<sup>st</sup> Assistant County Engineer.

Mr. Staigle,

MBCO Engineering, LLC. is pleased to submit this proposal to provide surveying and engineering services for the Signal Design at the intersection of S. Mason Road and Delta Lakes Drive in Richmond, TX. Through a site visit, we understand that the project will consist of performing a topographical survey along with ROW and easement determination and the design of a signal with loop detection for the six lane boulevard intersection. In addition to the design of the signal, MBCO will provide contract and construction support. The County has requested additional services to be provided including 1) Design Changes outside of scope, 2) ROW Abstracting and 3) Record Drawing Support.

We have priced the scope of services as shown below:

**Survey: (\$12,250.00)**

- Perform Topographical survey of the project area (500' in all directions) picking up all surface features including but not limited to curbs, pavement markings, structures, signs, utilities and Right of Way markers
- Survey inverts of all manholes and inlets within project area to the outfall of storm drainage.
- Develop topographical survey file using AutoCAD including 3d model and contours
- Research existing plats and deeds
- Establish Right of Way and all easements within the project limits

**Engineering: (\$18,150.00)**

- Develop Construction Plans including the following sheets:

Cover Sheet	Signing and Pavement Markings Layout
Index of sheets	Proposed Traffic Signal Layout
Basis of Estimate	Proposed Traffic Signal Details
General Notes	Signal Standards and Details
Existing Conditions Layout	Traffic Control

- Coordination with the HOA on Easements and Mast Arm Style
- Preliminary signal timing – min green, max green, yellow and red clearance intervals, walk time, pedestrian clearance time for countdown signal, gap and extension times

# **MBCO** Engineering, LLC.

## **Contract Support Services: (\$1,000.00)**

- Create Project Manual with Technical Specifications
- Prepare Bid Tabs for the County for Review
- Develop recommendation for Lowest Qualified Bidder
- Attend Pre-Bid Meeting

## **Construction Support Services: (\$3,600.00)**

- Review and respond to RFIs and Change Orders submitted by the Contractor
- Review and recommend for approval Contractor Pay Estimates
- Create Punch List and perform close out walk through with Contractor and County

**Total Fee of above services:**

**\$ 35,000.00**

## **Additional Services:**

Fort Bend County as requested that some additional services be offered and will only occur if authorized by the County:

## **Design Changes outside of Scope of Services: (Time and Material not to exceed \$2,000.00)**

- Scope of Services will be determined and fee and schedule will be based off the attached Rate Schedule

## **ROW Abstracting (per ROW or Easement Tract): \$1,500.00 per tract for a total of 3 parcels for a total of \$4,500.00**

- Per Authorization of Fort Bend County, MBCO will abstract Tracts at the rate listed above per tract

## **As-built Record Drawings: \$500.00**

- Collect all markups from County and Contractor
- Create copy and modify design drawings into Sealed As-built record drawings for County Filing.

## **Construction Staking: \$1,000.00**

- Stakeout points for construction staking using GIS and CADD
- Field surveying to set construction staking.

The fees will be lump sum unless stated in this proposal and billed monthly based on percent complete progress billing.

# **MBCO** Engineering, LLC.

Exclusions and Exceptions:

- This scope of services assumes that the client will provide any as-built drawings prior to design.
- All reproduction will be at cost

We are excited to provide these services to you and your client and look forward to hearing from you. Should you have any questions please contact me at 281-760-1656 or 832-607-2047 or at [brock.crenek@mbcoengineering.com](mailto:brock.crenek@mbcoengineering.com).

Sincerely,



Brock Crenek, PE  
Sr. Vice President

COMPENSATION FOR ADDITIONAL SERVICES  
S. MASON ROAD AT DELTA LAKES DRIVE SIGNAL DESIGN

MAXIMUM LOADED SALARY RATES

MBCO ENGINEERING, LLC.

LABOR CLASSIFICATION	HOURLY RATE
PRINCIPAL	\$ 215.00
SENIOR PROJECT MANAGER	\$ 175.00
PROJECT MANAGER	\$ 150.00
RPLS	\$ 145.00
PROJECT ENGINEER	\$ 125.00
SURVEY CREW	\$ 190.00
SIT	\$ 95.00
DESIGNER	\$ 130.00
EIT	\$ 90.00
CADD OPERATOR	\$ 100.00
ADMIN/CLERICAL	\$ 50.00