

AGREEMENT BETWEEN COUNTY AND ENGINEER

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

THIS AGREEMENT is made on the 15 day of December, 2015,

Between the **COUNTY:** BRAZOS COUNTY, TEXAS
c/o Brazos County Commissioners' Court
Attention: County Judge
200 South Texas Ave., Ste. 332
Bryan, Texas 77803

and the **ENGINEER:** Mitchell & Morgan
3204 Earl Rudder Freeway South
College Station, TX 77845

for the following **PROJECT:** Professional Engineering and Surveying Services for
engineering services for civil design work related to the Brazos County Expo Phase III
Expansion facility.

The COUNTY and ENGINEER agree as set forth below.

ARTICLE I
ENGINEER'S RESPONSIBILITY

1.1 ENGINEER'S SERVICE

1.1.1 The ENGINEER'S services consist of those services performed by the ENGINEER, ENGINEER'S employees and the ENGINEER'S consultants as enumerated in Articles 2 and 3 of this Agreement.

1.1.2 The ENGINEER'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The ENGINEER shall submit for the COUNTY'S approval a schedule for the performance of the ENGINEER'S services which may be adjusted as the Project proceeds and shall include allowances for periods of time

required for the COUNTY'S review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the COUNTY shall not, except for reasonable cause, be exceeded by the ENGINEER or the COUNTY.

ARTICLE II
SCOPE OF ENGINEER'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The ENGINEER'S Basic Services consist of those described in attached Exhibit "A" and incorporated by reference hereto – SCOPE OF BASIC SERVICES TO BE PROVIDED BY Mitchell & Morgan, TO BRAZOS COUNTY.

ARTICLE III
ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in attached Exhibit "A" as Additional Services are not included in the Basic Services. It is expressly understood and agreed that ENGINEER shall not furnish any of the additional services without the prior written authorization of the COUNTY or the COUNTY'S designee. The COUNTY shall have no obligation to pay for such additional services, which have been performed without the prior written authorization of the COUNTY as herein above provided.

3.1.2 Services which could possibly be required, but at the time of this Agreement were yet to be determined and which are not included in the Basic Services or Additional Services as identified and described in EXHIBIT "A", shall be considered Contingent Additional Services. A list of possible Contingent Additional Services that could be needed as the Project proceeds is included at the end of Exhibit "A."

3.1.3 It is expressly understood and agreed that the ENGINEER shall not furnish any of the Contingent Additional Services without the prior written authorization of the COUNTY or the COUNTY'S designee. The COUNTY shall have no obligation to pay for such Contingent Additional Services, which have been performed without the prior written authorization of the COUNTY as herein above provided.

ARTICLE IV
COUNTY'S RESPONSIBILITY

4.1 The COUNTY shall provide full information regarding requirements for the Project, including a program, which shall set forth the COUNTY'S objective, schedules, constraints and criteria.

4.2 The COUNTY shall establish and update an overall budget for the Project, including the Construction Cost, the COUNTY'S other costs and reasonable contingencies related to all of these costs.

4.3 The COUNTY shall designate a representative authorized to act on the COUNTY'S behalf with respect to the Project. The COUNTY, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by the ENGINEER in order to avoid unreasonable delay in the orderly and sequential progress of the ENGINEER'S service.

4.4 The COUNTY shall give prompt written notice to the ENGINEER if the COUNTY becomes aware of any fault or defect in the Project or non-conformance with the contract documents. Any delay by the COUNTY in providing said notice shall not constitute a waiver, a bar or act to estop the COUNTY from exercising any of its rights under this contract.

4.5 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as the COUNTY deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.

4.6 The proposed language of certificates or certifications requested of the ENGINEER or the ENGINEER'S consultants shall be submitted to the ENGINEER for review and approval at least 14 days prior to execution. The COUNTY shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

4.7 The COUNTY shall also provide those specific items identified in the attached Exhibit A incorporated by reference hereto – ITEMS TO BE PROVIDED BY THE COUNTY TO THE ENGINEER.

ARTICLE V **CONSTRUCTION COST**

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the COUNTY of all elements of the Project designed or specified by the ENGINEER.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the COUNTY and equipment designed, specified, selected or specially provided by the ENGINEER, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the work during construction.

5.1.3 Construction Cost does not include the compensation of the ENGINEER and the ENGINEER'S consultants, the costs of the land, right-of-way, financing or other costs which are the responsibility of the COUNTY.

5.2 RESPONSIBILITY FOR CONSTRUCTION COSTS

5.2.1 Evaluations of the COUNTY'S Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the ENGINEER, represent the ENGINEER'S best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the ENGINEER nor the COUNTY has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices,

or over competitive bidding, market or negotiating conditions. Accordingly, the ENGINEER cannot and does not warrant or represent that bids or negotiated prices will not vary from the COUNTY'S Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the ENGINEER.

ARTICLE VI

USE OF ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 The COUNTY shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement by the ENGINEER with the same force and effect as if the COUNTY prepared same. Copies of complete or partially completed mylar reproducible, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement shall be delivered to the COUNTY when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first. The ENGINEER may retain one set of reproducible copies of the documents and these copies shall be for the ENGINEER'S sole use in preparation of studies or reports for the COUNTY. The ENGINEER is expressly prohibited from selling, licensing, or otherwise marketing or donating these documents, or using the documents in preparation of other work for any other client, without the prior express written permission of the COUNTY.

6.2 All documents including reports, drawings and specifications prepared by the ENGINEER pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the COUNTY or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by the ENGINEER for the specific purposes intended will be at the COUNTY'S sole risk and without liability or legal exposure to the ENGINEER. Any such verification or adaptation will entitle the ENGINEER to further compensation at rates to be agreed upon by the COUNTY and the ENGINEER.

6.3 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the ENGINEER'S reserved rights.

ARTICLE VII

TERMINATION, SUSPENSION OR ABANDONMENT

7.1 This Agreement may be terminated by either party upon not less than fourteen (14) days written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

7.2 If the COUNTY suspends the Project for more than thirty (30) consecutive days, the ENGINEER shall be compensated for services performed prior to notice of such suspension.

7.3 This Agreement may be terminated by the COUNTY upon not less than fourteen (14) days written notice to the ENGINEER in the event that the Project is permanently abandoned. If the COUNTY abandons the Project for more than ninety (90) consecutive days, the ENGINEER may terminate this Agreement by giving written notice.

7.4 If the COUNTY fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the ENGINEER may, after giving seven (7) days written notice to the COUNTY, suspend services under this Agreement.

7.5 Failure of the COUNTY to make payments to the ENGINEER in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

7.6 If the COUNTY fails to make payment when due to the ENGINEER for services and expenses, the ENGINEER may, upon seven (7) days written notice to the COUNTY, suspend performance of services under this Agreement. Unless the ENGINEER receives payment in full within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the ENGINEER shall have no liability to the COUNTY for delay or damage caused by the COUNTY because of suspension of services.

7.7 In the event of termination that is not the fault of the ENGINEER, the ENGINEER shall be compensated for services performed prior to termination, together with Reimbursable Expenses, if any, then due.

ARTICLE VIII **MISCELLANEOUS PROVISIONS**

8.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the COUNTY. Venue for any dispute or disagreement regarding the terms of this Agreement shall be in Brazos County, Texas.

8.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitation shall commence to run not later than either the date of Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.

8.3 The COUNTY and the ENGINEER, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representative of such other party with respect to all covenants of this Agreement. Neither the COUNTY nor the ENGINEER shall assign this Agreement without the express written consent of the other party.

8.4 This Agreement represents the entire integrated agreement between the COUNTY and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the COUNTY and the ENGINEER.

8.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the COUNTY or the ENGINEER.

8.6 Unless otherwise provided for in this Agreement, the ENGINEER and the ENGINEER'S consultants have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

8.7 The ENGINEER shall have the right to include representations of the design of the Project, including photographs, among the ENGINEER'S promotional professional materials. The ENGINEER'S materials shall not include the COUNTY'S confidential or proprietary information, if the COUNTY has previously advised the ENGINEER in writing of the specific information considered by the COUNTY to be confidential or proprietary.

8.8 COMPLIANCE AND STANDARDS. The ENGINEER agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto, and shall use that degree of care and skill commensurate with the engineering profession to comply with all applicable state, federal and local laws, ordinances, rules and regulations relating to the work to be performed hereunder and the ENGINEER'S performance.

8.9 SURVEYING SERVICES: In accordance with the Professional Land Surveying Practices Act of 1989, the COUNTY is informed that any complaints about surveying services may be forwarded to the Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752, (512) 452-9427.

8.10 INDEMNIFICATION: ENGINEER shall save and hold harmless the COUNTY from and against any and all claims and liability due to activities of the ENGINEER, its agents or employees, performed under this Agreement and which result from any negligent act, error, or omission of the ENGINEER, or of any person employed by the ENGINEER. The ENGINEER shall also save harmless the COUNTY from and against any and all expenses, including attorney's fees which might be incurred by the COUNTY in litigation, or otherwise, resisting said claims or liabilities which might be imposed on the COUNTY as the result of such activities by the ENGINEER, its agents or employees.

8.11 LIQUIDATED DAMAGES: It is acknowledged that the ENGINEER's failure to achieve substantial completion of the Work within the Contract Time provided by the Contract Documents will cause the COUNTY to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the COUNTY of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the ENGINEER agrees that liquidated damages may be assessed and recovered by the COUNTY as against ENGINEER and its Surety, in the event of delayed completion and without the COUNTY being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore ENGINEER shall be liable to the COUNTY for payment of liquidated damages in the amount of _____\$0_____ for each day that Substantial Completion is delayed beyond the Contract Time as adjusted for time extensions provided by the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and ENGINEER shall pay them to COUNTY without limiting COUNTY's right to terminate this agreement for default as provided elsewhere herein.

ARTICLE IX
PAYMENTS TO THE ENGINEER

9.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES

9.1.1 Upon approval by the COUNTY, or the COUNTY'S designee, payment for Basic Services shall be made monthly and shall be in proportion to services performed that month within each phase of service.

9.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

9.2.1 Upon approval by the COUNTY or the COUNTY'S designee of the ENGINEER'S statement of services rendered or expenses incurred, payment on account of the ENGINEER'S Additional Services and for Reimbursable Expenses shall be made monthly.

9.3 PAYMENTS WITHHELD

9.3.1 No deductions shall be made from the ENGINEER'S compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in the Work other than those for which the ENGINEER has been found to be liable.

9.4 ENGINEER'S ACCOUNTING RECORDS

9.4.1 Records of Reimbursable Expenses pertaining to Additional Services and services performed on an hourly basis shall be available to the COUNTY or the COUNTY'S authorized representative at mutually convenient times.

9.5 LIMIT OF APROPRIATION

9.5.1 Prior to the execution of this Agreement, the ENGINEER has been advised by the COUNTY and the ENGINEER fully understand and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the total maximum compensation that ENGINEER may become entitled to hereunder, and the total maximum sum that the COUNTY shall become liable to pay to the ENGINEER hereunder, shall not, under any conditions, circumstances or interpretations hereof, exceed the sum certified as available by the County Auditor in the Auditor's Certificate attached hereto.

ARTICLE X
BASIS OF COMPENSATION

The COUNTY shall compensate the ENGINEER from funds obtained through current revenue of Brazos County as follows:

10.1 BASIC COMPENSATION

10.1.1 For Basic Services, as described in Article 2, Basic Compensation shall be computed as follows:

In accordance with the attached Exhibit “A” incorporated by reference hereto, SCHEDULE OF FEES.

10.2 COMPENSATION FOR ADDITIONAL SERVICES

10.2.1 For Additional Services of the ENGINEER, as described in Article 3, compensation shall be computed as follows:

In accordance with the attached Exhibit “A” incorporated by reference hereto, SCHEDULE OF FEES.

10.3 COMPENSATION FOR CONTINGENT ADDITIONAL SERVICES

10.3.1 For Contingent Additional Services of the ENGINEER, as described in Article 3, compensation shall be computed as follows:

In accordance with the attached Exhibit “A” incorporated by reference hereto, SCHEDULE OF FEES.

10.3.2 Payments shall be made by the COUNTY in accordance with Texas Government Code Chapter 2251. The COUNTY shall pay the ENGINEER’S statement as approved by the COUNTY’S designee within thirty (30) days after the COUNTY’S designee’s approval of the same, provided that the approval or payment of any such statement shall not be considered to be evidence of performance by the ENGINEER to the point indicated by such statement or of receipt or acceptance by the COUNTY of the work covered by such statement.

ARTICLE XI **OTHER CONDITIONS OR SERVICES**

11.1 INSURANCE

11.1.1 The ENGINEER shall file with the COUNTY a Certificate of Errors and Omissions Insurance having minimum limits of One Million and No/100 Dollars (\$1,000,000.00) for each occurrence and annual One Million and No/100 Dollars (\$1,000,000.00) aggregate. Such Errors and Omissions Insurance shall have a deductible not in excess of Two Hundred Thousand and No/100 Dollars (\$200,000.00) self-insured. Such Certificate shall bear the endorsement “Not to be canceled without thirty (30) days prior notice to BRAZOS COUNTY, TEXAS.” The ENGINEER shall maintain the Errors and Omissions Insurance at all times this Agreement is in effect and for a period of five (5) years after completion of the Project. Failure to maintain the required insurance shall be deemed to be a material breach of this Agreement.

11.1.2 The ENGINEER shall also provide Worker’s Compensation, automobile and comprehensive general liability policies. The ENGINEER shall deliver the insurance certificates to the COUNTY. The coverage provided herein shall contain an endorsement providing thirty (30) days notice to the COUNTY prior to any cancellation of coverage. Said coverage shall be written by an insurer acceptable to the COUNTY and shall be in a form acceptable to the COUNTY. If the ENGINEER has canceled or allowed to lapse any of these insurance policies then the COUNTY may pay for such insurance and may hold the amount of such payment out of the ENGINEER’S fees or be otherwise reimbursed. Failure to maintain the required insurance shall be deemed to be a material breach of this Agreement.

11.2 PERIODS OF SERVICE

11.2.1 The ENGINEER shall begin work immediately upon receipt of the Notice-to-Proceed in writing by the COUNTY or the COUNTY's designee. The project will proceed according to the schedule shown in Exhibit "A." The schedule makes certain assumptions regarding review processes and other activities that are beyond the control of the ENGINEER.

11.2.2 Working days shall be defined as standard workdays between Monday and Friday, exclusive of holidays.

11.2.3 This schedule assumes an orderly progression of the ENGINEER'S services. Delays beyond the control of the ENGINEER may be cause for extension of this period of service, in which case the ENGINEER shall submit in writing to the COUNTY its request for such extensions a minimum of thirty (30) calendar days prior to the end of the affected service period.

11.2.4 If the COUNTY has requested significant modifications or changes in the general scope, extent or character of the Project, the time or performance of the ENGINEER'S services shall be adjusted equitably.

This Agreement entered into as of the day and year first written above.

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolution extending said authority have been duly passed and are now in force and effect.

BRAZOS COUNTY, TEXAS

ENGINEERING FIRM

Duane Peters, County Judge

by:
Principal

Acting by and through the authority of
the Brazos County Commissioners Court

Attest:

County Clerk

Approved as to Form:

Assistant County Attorney



Charles Wendt
 Brazos County Purchasing Department
 Brazos County Administration Building
 200 South Texas Avenue, Suite 352
 Bryan, Texas 77803

7Dec15

RE: Proposal for Site Design Services for the Phase III Site Plan Additions for the Brazos County Expo Complex Located in Bryan, Texas

Dear Mr. Wendt,

Thank you for the opportunity to propose professional engineering services for the Masterplan Phase III construction at the Brazos County Expo Complex in Bryan, Texas. The following table delineate the various services and cost of service which will be provided under this contract. Please note that per our discussion, storm drainage detention has been constructed with the earlier phases and no analysis will be required.

Summary of Costs			
	Sheet (hours)	Cost/ Sheet	Total
Cover Sheet	1	200	\$ 200.00
Overall Site Plan	1	5000	\$ 5,000.00
Detailed Site/Grading Plan	3	3500	\$ 10,500.00
Water Line Plan	1	3500	\$ 3,500.00
Sewer Line Plan	1	3500	\$ 3,500.00
Storm Drain Plans	2	3500	\$ 7,000.00
Special Details	1	2500	\$ 2,500.00
Standard Details	4	150	\$ 600.00
Survey	1.1	11500	\$ 12,650.00
Environmental	1.1	1000	\$ 1,100.00
Site Lighting			\$ 3,000.00
Power for RV's			\$ 3,500.00
Bidding Documents	6	135	\$ 810.00
Construction Phase Services	20	135	\$ 2,700.00
As Built Survey	1.1	500	\$ 550.00
Total Proposal			\$ 56,560.00

If there are other services that you desire we will provide those services on an hourly basis at the following hourly rates:

Hourly Rates:

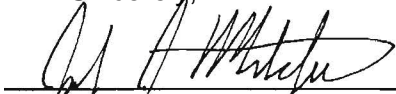
Sr. Professional Engineer – Development Coordinator	\$150/hr
Sr. Professional Design Engineer	\$130/hr
Staff Planner	\$95/hr
Sr. EIT	\$95/hr
Jr. EIT	\$75/hr
Drafting	\$65/hr
Administrative	\$55/hr

Schedule

Notice to Proceed	Days	15-Dec-15
Survey	40	24-Jan-16
Conceptual Design	10	3-Feb-16
Preliminary Design	19	22-Feb-16
Final Design	49	11-Apr-16
Bid Documents	4	15-Apr-16

We do require a signed contract to begin work and we have attached one for your signature. Invoices will be submitted monthly based on work completed during that month. Reimbursable items such as other professional services, printing, copying, shipping and mailing, etc. will be billed at cost or invoice plus ten percent and reimbursed during the monthly billing cycle. Please let us know if you have any questions or comments. We look forward to working with you on this project.

Sincerely,



Joel J. Mitchell, PE
Partner

cc: file