

ARF-2419

DRAINAGE DISTRICT AGENDA

Date: 12/21/2010

Dodson & Associates, Drainage Criteria Manual

Submitted For: Mark Vogler, Director

Submitted By:

RoseAnn Vargas, Drainage District

Item #: 3.

D3

Department: Drainage District

Renewal Agreement/

Appointment:

Reviewed by County Yes

Attorney's Office:

Multiple Originals Y/N?: (2) originals

Information

SUMMARY OF ITEM

Take all appropriate action on Second Amendment to Agreement for Professional Services between Fort Bend County Drainage District and Dodson & Associates, Inc. regarding the Drainage Criteria Manual, to extend the termination date from December 31, 2010 to February 28, 2011 for preparation of presentation of the Final Drainage Criteria Manual to Commissioners Court/Drainage District Board of Directors.

SPECIAL HANDLING

→ Return (2) originals to Dwayne Grigar, Drainage District.

12-28-10

Attachments

Link: Dodson & Assoc., Criteria Manual

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL
ENGINEERING SERVICES – DRAINAGE CRITERIA MANUAL

THIS SECOND AMENDMENT to the Agreement for Professional Engineering Services is made and entered into by and between the FORT BEND COUNTY DRAINAGE DISTRICT, a body corporate and politic under the laws of the State of Texas, acting herein by and through the Board of Directors, hereinafter referred to as “District” and DODSON & ASSOCIATES, INC., hereinafter referred to as “Engineer,” authorized to conduct business in the State of Texas.

RECITALS

WHEREAS, District and Engineer entered an Agreement for Professional Engineering Services dated June 22, 2010, (collectively, the “Agreement”) and a First Amendment on September 7, 2010 attached hereto as Exhibit A & B, incorporated by reference as if set forth herein verbatim for all purposes. District and Engineer desire to amend said Agreement and Amendment as set forth below;

NOW, THEREFORE, in consideration of the foregoing, the Agreement between District and Engineer is hereby amended as follows:

- A. This Amendment shall become effective upon execution of the District and shall terminate on or before February 28, 2011.
- B. Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended.
- C. If there is a conflict between this Second Amendment and the Agreement or First Amendment, the provisions of this Second Amendment shall prevail.

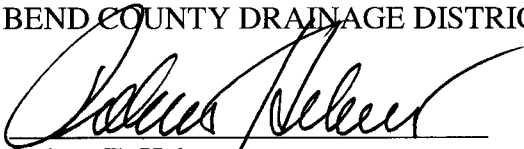
REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

EXECUTION

This Second Amendment shall not become effective until executed by District.

FORT BEND COUNTY DRAINAGE DISTRICT

BY:

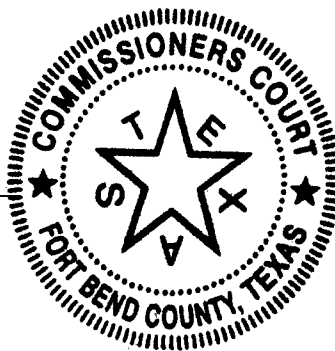

Robert E. Hebert
Drainage District Board Chairman

12-21-2010

Date


Attest:


Dianne Wilson, County Clerk



APPROVED:


By:


Mark Vogler, Director
Drainage District

12/15/10

Date

CONTRACTOR: DODSON & ASSOCIATES, INC.


Craig T. Maske, P.E., CFM
Vice President

12/14/10

Date

MER:Dodson & Associates.DD.3523.2nd.AMEND

Exhibit A: Original Agreement dated June 22, 2010
Exhibit B: First Amendment dated September 7, 2010

EXHIBIT A

TO

SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL ENGINEERING
SERVICES – DRAINAGE CRITERIA MANUAL

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
RELATED TO DRAINAGE CRITERIA MANUAL**

THIS AGREEMENT is made and entered into by and between the Fort Bend County Drainage District, (hereinafter "District"), a body corporate and politic under the laws of the State of Texas, and Dodson & Associates, Inc. (hereinafter "Engineer"), a corporation authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, District desires that Engineer provide professional engineering services related to the drainage criteria manual (hereinafter "Services"); and

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

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

AGREEMENT

Article I. Scope of Services

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

Article II. Personnel

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

2.2 All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Engineer who, in the opinion of District, is incompetent or by his conduct becomes detrimental to the Project shall, upon request of District, immediately be removed from association with the Project.

Article III. Compensation and Payment

3.1 The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is eight thousand one hundred dollars and no/100 (\$8,100.00). In no case shall the amount paid under this Agreement exceed the Maximum Compensation without an approved change order.

3.2 All performance of the Scope of Services including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in

advance and authorized by District. Payment will be made in accordance with those payment procedures set forth in Section 3.3 below.

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

Article IV. Time of Performance

It is understood and agreed that the 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 September 30, 2010. Tasks described in the Scope of Services shall be completed within this time or within such additional time as may be extended by the District.

Article V. Modifications

Any modifications to this Agreement must be in writing and must be signed by both parties.

Article VI. Termination

6.1 Termination for Convenience

6.1.1 District may terminate this Agreement at any time upon thirty (30) days written notice.

6.2 Termination for Default

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

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

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

6.2.2 If, after termination, it is determined for any reason whatsoever that Engineer was not in default, or that the default was excusable, the rights and obligations of the

parties shall be the same as if the termination had been issued for the convenience of the District in accordance with Section 6.1 above.

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

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

Article VII. Ownership and Reuse of Documents

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

Article VIII. Inspection of Books and Records

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

Article IX. Insurance

9.1 Prior to commencement of the Services, Engineer shall furnish District with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to District. Engineer shall provide certified copies of insurance endorsements and/or policies if requested by District. Engineer 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. Engineer shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

9.1.1 Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

9.1.2 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.

9.1.3 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.

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

9.1.5 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.

9.2 District 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 (except Workers Compensation) written on behalf of Engineer shall contain a waiver of subrogation in favor of District and the members of Commissioners Court.

9.3 If required coverage is written on a claims-made basis, Engineer warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

Article X. Indemnity

ENGINEER SHALL SAVE HARMLESS DISTRICT FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF ENGINEER, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF ENGINEER OR ANY OF ENGINEER'S AGENTS, SERVANTS OR EMPLOYEES.

Article XI. Confidential and Proprietary Information

11.1 Engineer acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to District. Any and all information of any form obtained by Engineer or its employees or agents in the performance of this Agreement shall be deemed to be confidential information of District ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Engineer 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 Engineer) publicly known or is contained in a publicly available document; (b) is furnished by District to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Engineer's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (d) is independently developed by employees or agents of Engineer who can be shown to have had no access to the Confidential Information.

11.2 Engineer agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Engineer uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to District hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Engineer shall use its best efforts to assist District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Engineer shall advise District immediately in the event Engineer 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 Engineer will at its expense cooperate with District in seeking injunctive or other equitable relief in the name of District or Engineer against any such person. Engineer agrees that, except as directed by District, Engineer will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at District's request, Engineer will turn over to District all documents, papers, and other matter in Engineer's possession which embody Confidential Information.

11.3 Engineer acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to District that is inadequately compensable in damages. Accordingly, District may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Engineer acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of District and are reasonable in scope and content.

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

Article XII. Independent Contractor

12.1 In the performance of work or services hereunder, Engineer 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.

12.2 Engineer and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of District and shall not be entitled to any of the privileges or benefits of District employment.

Article XIII. Contract Administration

13.1 All written notices, demands, and other papers or documents to be delivered to District under this Agreement shall be delivered to the Fort Bend County Drainage District, P.O. Box 1028, Rosenberg, Texas 77471, or at such other place or places as it may from time to time

designate by written notice delivered to Engineer. For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following address: Fort Bend County, 301 Jackson Street, Suite 719, Richmond, Texas 77469, Attention: County Judge.

13.2 All written notices, demands, and other papers or documents to be delivered to Engineer under this Agreement shall be delivered to Dodson & Associates, Inc., 5629 F.M. 1960 West, Suite 314, Houston, Texas 77069, or such other place or places as Engineer may designate by written notice delivered to District.

Article XIV. Compliance with Laws

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

Article XV. Assignment

Neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

Article XVI. Applicable Law

This Agreement shall be construed under and in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

Article XVII. Successors and Assigns

District and Engineer bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Article XVIII. Publicity

Engineer shall not make news releases, publicize or issue advertising pertaining to this Agreement without first obtaining the written approval of District.

Article XIX. Conflict

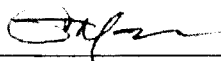
In the event there is a conflict between this Agreement and the attached exhibit, this Agreement shall control.

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 22 day of June, 2010.


FORT BEND COUNTY DRAINAGE
DISTRICT


Robert E. Hebert, County Judge

DODSON & ASSOCIATES, INC.


Authorized Representative
CRAIG T. MASKE, P.C., C.F.M.
VICE PRESIDENT

ATTEST:


Dianne Wilson, County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 8100.⁰⁰ to accomplish and pay the obligation of Fort Bend County Drainage District under this contract.

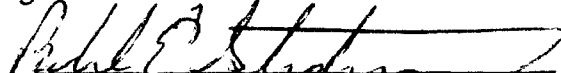

Robert Edward Sturdivant, County Auditor

EXHIBIT A



April 23, 2010

DAI Job No. 1780

Mr. Dwayne G. Grigar
Fort Bend County Drainage District
P.O. Box 1028
Rosenberg, Texas 77471

281-342-2863 (T)
281-342-9130 (F)

Re: Fort Bend County Drainage Criteria Manual Revisions – Addendum #1

Dear Dwayne:

We are pleased to present this proposal for an addendum to the engineering services related to the Fort Bend County Drainage Criteria Manual Revisions. The purpose of these added revisions are to update the coincident frequency methodology based on recent flow data. The budget estimate for these changes is \$6,720 and the scope of work includes the following:

- **Update Text:** We will update the text and figures to reflect the changes made to the data and methodology.
- **Update Figure 7-1:** We will update Figure 7-1 (Brazos River Profiles and Flows) to include more recent Brazos River flow and stage data through 2009. This will include collecting recent flow data, determining the new profiles and developing the new graphs using MS Excel.
- **Update Figure 7-3:** We will update Figure 7-3 (Depth Duration-Frequency Curves) to include more recent flow data through 2009. This will include collecting recent flow and stage data for the Brazos River, updating the frequency analysis, determining the new curves and developing the new graphs.
- **Respond to Comments:** We will respond to any comments on the updates described above.
- **Deliverables:** If not previously submitted, these updates will be included in the final version of the Updated Drainage Criteria Manual.

Please do not hesitate to contact us if you have any questions or comments regarding this budget proposal. We look forward to working with you on this project.

Sincerely,

Kristin White, PE, CFM, LEED AP
Project Manager
Dodson & Associates, Inc.

BUDGET BREAKDOWN

The following table provides a breakdown of the total budget on a task-by-task basis:

Work Item	Principal	Proj. Mgr.	Sr. Hydro.	Hydro. Asst.	GIS Specialist	Technical Support	Client Support	Hrs.	Rate	Budget
1 Update text	0	2	2	2	2	0	4	10	\$980	\$9,800
2 Update Figure 7.1 Brazos River Profiles & Flows	0	2	4	2	8	0	2	15	\$1,755	\$26,325
3 Update Figure 7.3 Depth-Duration-Frequency	0	4	8	2	8	0	2	19	\$2,325	\$44,175
4 Respond to comments and make necessary changes	0	4	4	2	0	0	2	11	\$1,385	\$15,235
Subtotal Task 1	0	12	18	6	18	0	8	55		\$85,535
5	0	12	18	6	18	0	8	55		
Standard Hourly Rates	\$745.00	\$1,755.00	\$1,755.00	\$745.00	\$745.00	\$230.00	\$690.00			
Total Budget	\$0.00	\$21,060.00	\$31,590.00	\$4,770.00	\$13,410.00	\$0.00	\$5,520.00			\$76,440.00
Reimbursable Expenses										\$21,500.00
TOTAL BUDGET REQUIREMENT										\$97,940.00

Accepted by: _____ Date: _____

Invoice Address: _____

Please note that any liability of Dodson will be limited to the amount of compensation actually collected under the terms of this proposal.

This proposal has been prepared for the exclusive use of the person/company to whom it is addressed. It should not be otherwise duplicated or distributed without the express written consent of Dodson & Associates, Inc. All rights reserved.

EXHIBIT B

TO

SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL ENGINEERING
SERVICES – DRAINAGE CRITERIA MANUAL

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

**FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL
 ENGINEERING SERVICES – DRAINAGE CRITERIA MANUAL**

THIS FIRST AMENDMENT to the Agreement for Professional Engineering Services is made and entered into by and between the FORT BEND COUNTY DRAINAGE DISTRICT, a body corporate and politic under the laws of the State of Texas, acting herein by and through the Board of Directors, hereinafter referred to as "District" and DODSON & ASSOCIATES, INC., hereinafter referred to as "Engineer," authorized to conduct business in the State of Texas.

RECITALS

WHEREAS, District and Engineer entered an Agreement for Professional Engineering Services dated June 22, 2010, (collectively, the "Agreement") attached hereto as Exhibit A, incorporated by reference as if set forth herein verbatim for all purposes. District and Engineer desire to amend said Agreement and Amendment as set forth below;

NOW, THEREFORE, in consideration of the foregoing, the Agreement between District and Engineer is hereby amended as follows:

- A. An additional amount not-to-exceed \$2,088.00 shall be available for preparation of CD's of the final Drainage Criteria Manual and presentation of the Final Drainage Criteria Manual to Commissioners Court/Drainage District Board of Directors.
- B. Contractor's compensation for the Project shall not exceed \$10,188.00 allocated as follows:
 - 1. \$8,100.00 for services under the Agreement; and
 - 2. \$2,088.00 for services described in Section A above.
- C. This Amendment shall become effective upon execution of the District and shall terminate on or before December 31, 2010.
- D. Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended.
- E. If there is a conflict between this First Amendment and the Agreement, the provisions of this First Amendment shall prevail.

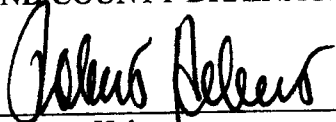
REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

EXECUTION

This Agreement shall not become effective until executed by District.


FORT BEND COUNTY DRAINAGE DISTRICT

BY:


Robert E. Hebert
Drainage District Board Chairman

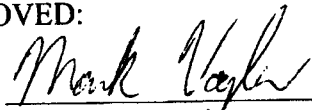
9-7-10
Date

Attest:


Dianne Wilson, County Clerk


APPROVED:

By:


Mark Vogler, Director
Drainage District

9/6/10
Date

CONTRACTOR: DODSON & ASSOCIATES, INC.


Craig T. Maske, P.E., CFM
Vice President

9/1/10
Date

MER:Dodson & Associates.DD.3523.AMEND

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$10,188 to accomplish and pay the obligation of the Fort Bend County Drainage District under this Agreement.

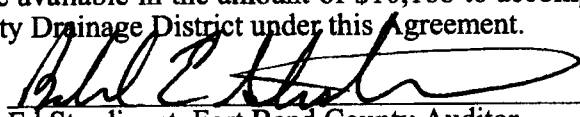

Ed Sturdivant, Fort Bend County Auditor

Exhibit A: Original Agreement dated June 22, 2010