

FORT BEND COUNTY FY 2010  
COMMISSIONERS COURT AGENDA REQUEST FORM  
Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: 01/19/2010 Submitted By: P. Batts  
Court Agenda Date: 01/26/2010 Department: Engineering  
Phone Number: 281 633 7507

SUMMARY OF ITEM: Take all appropriate action to approve the Second Amendment to Professional Engineering Services Agreement between Fort Bend County and Othon, Inc. regarding Ransom Road in an amount not to exceed \$1,170,000.00, Mobility Bond Project #747, Precinct 1. (Fund: Mobility Bonds)

RENEWAL AGREEMENT/APPOINTMENT YES  NO   
REVIEWED BY COUNTY ATTORNEY'S OFFICE: YES  NO

List Supporting Documents Attached:

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office  (✓ when completed)  
If by E-Mail to ospindon@co.fort-bend.tx.us If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

- |  |  |
|--|--|
| <input type="checkbox"/> Auditor (281-341-3774)                | <input type="checkbox"/> Comm. Pct. 1 (281-342-0587) |
| <input type="checkbox"/> Budget Officer (281-344-3954)         | <input type="checkbox"/> Comm. Pct. 2 (281-403-8009) |
| <input type="checkbox"/> Facilities/Planning (281-633-7022)    | <input type="checkbox"/> Comm. Pct. 3 (281-242-9060) |
| <input type="checkbox"/> Purchasing Agent (281-341-8642)       | <input type="checkbox"/> Comm. Pct. 4 (281-980-9077) |
| <input type="checkbox"/> Information Technology (281-341-4526) | <input type="checkbox"/> County Clerk (281-341-8697) |
| <input type="checkbox"/> Other:                                | <input type="checkbox"/> County Atty (281-341-4557)  |

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

2-4-10 2 orig. ret. to Pauletta at Engineering

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND §

**SECOND AMENDMENT TO  
PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
PROJECT NO. 747 – RANSOM ROAD**

**THIS SECOND AMENDMENT** is made and entered into by and between FORT BEND COUNTY, TEXAS, a public body corporate and politic of the State of Texas acting by and through the Fort Bend County Commissioners Court (hereinafter referred to as “County”) and OTHON, INC., (hereinafter referred to as “Engineer,”) authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, on or about April 22, 2008, County and Engineer entered a Professional Engineering Services Agreement, hereinafter referred to as “the Agreement,” and a First Amendment dated August 6, 2008, hereinafter referred to as “First Amendment” for the expansion of Ransom Road, Project No. 747, located in Fort Bend County, Texas, as part of the 2007 Fort Bend County Mobility Programs, hereinafter referred to as the “Project;” and,

WHEREAS, County and Engineer desire to amend the Agreement to revise the design for the Project from an open ditch roadway to a curb-and-gutter roadway with storm sewers, which requires significant revisions to the Project, as further described in Exhibit A and as set forth below.

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

AGREEMENT

1. Section 3.01 of the Agreement is hereby amended as follows:

“This Agreement shall become effective upon execution of the last party and shall terminate on or before December 31, 2010.”

2. Section 2.01 the Agreement is hereby amended as follows:

“For and in consideration of the services rendered by Engineer, and subject to the limit of appropriation under Section XVI, County shall pay to Engineer an amount not to exceed \$1,170,000, including all expenses, if any, as follows:

- A. \$740,000.00 for services under the Agreement;
- B. \$30,000.00 for additional services under the First Amendment; and
- C. \$400,000.00 for additional services under the Second Amendment.

3. Section XVI of the Agreement is hereby amended as follows:

16.01 “Prior to the execution of this Agreement, Engineer has been advised by County, and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that County shall have available the total maximum sum of \$1,170,000.00, including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by County.”

16.02 “Engineer does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Engineer may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$1,170,000.00 for described scope of services in all executed Work Authorizations.”

4. Attached hereto is Exhibit A – letter from Schaumburg & Polk dated December 22, 2009 regarding additional services, and Exhibit B – the Agreement approved by County on April 22, 2008, and Exhibit C – the First Amendment approved on August 6, 2008, incorporated by reference as if set forth therein verbatim for all purposes.

5. Except as modified herein, the Agreement and First Amendment remains in full force and effect and has not been modified or amended.

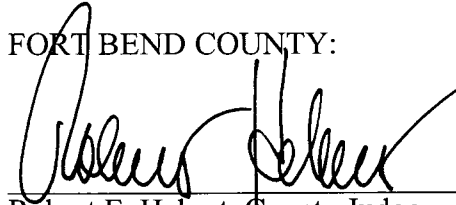
6. If there is a conflict between this Second Amendment and the Agreement and First Amendment, the provisions of this Second Amendment shall prevail.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

EXECUTION

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

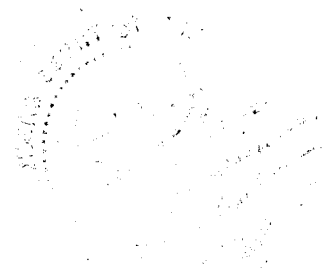
FORT BEND COUNTY:

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

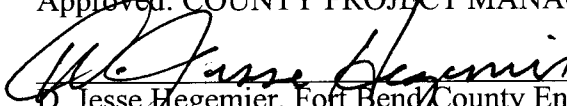
1-26-10  
Date

Attest:

  
\_\_\_\_\_  
Dianne Wilson, County Clerk

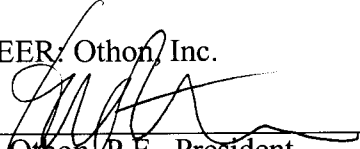


Approved: COUNTY PROJECT MANAGER

  
\_\_\_\_\_  
D. Jesse Hegemier, Fort Bend County Engineer

1/26/10  
Date

ENGINEER: Othon, Inc.

  
\_\_\_\_\_  
William Othon, P.E., President

January 12, 2010  
Date

Attest:

  
\_\_\_\_\_  
**Rita Rowan, Secretary**

MER:Engineering Services Agreement.Othon.3791-747- Second Amendment

Attachments: Exhibit A, B & C

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$1,170,000.00 to accomplish and pay the obligation of the Fort Bend County under this contract.

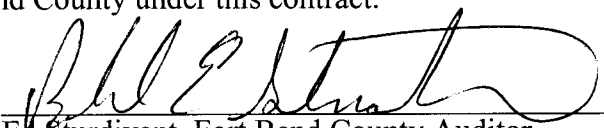
  
\_\_\_\_\_  
Ed Sturdivant, Fort Bend County Auditor

Exhibit A



December 22, 2009

Mr. D. Jesse Hegemier, P.E.  
County Engineer  
Fort Bend County  
1124 Blume Road  
Rosenberg, Texas 77471

Re: Ransom Road (FBC Project No. 747)  
Contract Amendment for Othon, Inc.

Project No. 300701.12

Dear Mr. Hegemier:

At the request of the County, Othon, Inc. has submitted a fee proposal to revise the design for the Ransom Road project from an open ditch roadway to a curb-and-gutter roadway with storm sewers. Significant revisions to the plans are required, affecting most of the nearly completed sheets. Additional monies will be required to fund this effort.

Storm sewers were not considered in the original negotiations with Othon. A contract amendment will therefore be required to add this service and to account for roadway design revisions. They have prepared a fee estimate resulting in the need for a contract fee increase in the amount of \$400,000.00. We have reviewed the scope and fee estimate, and recommend approval of the amendment.

Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter A. Ring', is written over a light blue horizontal line.

Peter A. Ring, P.E.  
Project Manager

PAR/bl



- County whenever defects and deficiencies in the completed service are observed, or when any observed actions or omissions are undertaken which are not in the best interest of County and the Project.
- 1.04 At the request of County, Engineer shall provide appropriate personnel for conferences at its offices, or attend conferences at the various offices of County, or at the site of the Project, and shall permit inspections of its offices by County, or others when requested by County.
  - 1.05 If requested by County, or on its behalf, Engineer shall prepare such engineering exhibits and plans as may be requested for all hearings related to the Project, and, further, it shall prepare for and appear at conferences at the office of the County's Engineer, hereinafter referred to as "County Project Manager," and shall furnish competent expert engineering witnesses to provide such oral testimony and to introduce such demonstrative evidence as may be needed throughout all trials and hearings with reference to any litigation relating to the Project.

## SECTION II THE ENGINEER'S COMPENSATION

- 2.01 For and in consideration of the services rendered by Engineer, and subject to the limit of appropriation under Section XVI, County shall pay to Engineer an amount not to exceed \$740,000.00, including all reimbursable expenses.
- 2.02 Progress payments for authorized work detailed in Work Authorizations will be made when Engineer has attained a level of completion equal to or greater than agreed upon milestones of completion, as determined solely by County.
- 2.03 Engineer shall not provide any services under this Agreement until authorized by County in writing.
- 2.04 Engineer shall submit invoices to County as detailed in Section 2.05 below and County shall pay each invoice within thirty (30) days after the County Project Manager's written approval provided however, that the approval or payment of any invoice shall not be considered to be conclusive evidence of performance by the Engineer to the point indicated by such invoice or of receipt or acceptance by the County of the services covered by such invoice.
- 2.05 Engineer shall submit to County two (2) copies of invoices detailing the amounts due for services performed during the previous month, set forth separately for work under this Agreement, and accompanied by a progress report indicating the percent complete for the Schedule of Values describing the tasks performed in all applicable Work Authorizations in a form acceptable to County. County shall reserve the right to withhold any payment pending verification of satisfactory work performed. County shall process all uncontested invoices within thirty (30) calendar days.

## SECTION III TIME OF PERFORMANCE

- 3.01 This Agreement shall become effective upon execution of the last party and shall terminate on or before December 31, 2009.
- 3.02 Services described under written Work Authorizations shall be completed in accordance with the schedules provided in said Work Authorizations or within such additional time as may be extended in writing by the County.

- 3.03 Any services provided by Engineer or any costs incurred by Engineer before issuance of a Work Authorization or after the expiration of a Work Authorization shall be ineligible for payment or reimbursement.

#### SECTION IV TERMINATION

- 4.01 County may terminate this Agreement at any time by providing thirty (30) days written notice to Engineer.
- 4.02 Upon receipt of such termination notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 4.03 Within thirty (30) days after receipt of notice of termination, Engineer shall submit a statement, describing in detail the services performed under this Agreement to the date of termination.
- 4.04 County shall then pay Engineer that proportion of the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.
- 4.05 Copies of all completed or partially completed designs, drawings, electronic data files and specifications and reports of any kind prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

#### SECTION V INSPECTIONS OF ENGINEER'S BOOKS AND RECORDS

Engineer shall permit County, or any duly authorized agent of the County, to inspect and examine all books and records of the Engineer for the purpose of verifying the amount of work performed on the Project by Engineer. County's right to inspect survives the termination of this Agreement for a period of four (4) years.

#### SECTION VI OWNERSHIP AND REUSE OF DOCUMENTS

- 6.01 All documents, including original drawings, electronic files, correspondence, estimates, specifications, field notes, and data created, produced, developed or prepared by Engineer or its approved outside advisory or support consultants (collectively, the "Documents") shall be the property of County.
- 6.02 County shall not be entitled to any Documents not deemed "final" by the Engineer until termination of this Agreement.
- 6.03 Engineer shall deliver all Documents to County within thirty (30) days of the termination of this Agreement and may retain a set of reproducible record copies of the documents, provided that Engineer has received full compensation due pursuant to the terms of this Agreement. County shall use the Documents solely in connection with the Project and for no other purposes, except with the express written consent of Engineer, which consent will not be unreasonably withheld. Any use of the Documents without the express written

- consent of the Engineer will be at the County's sole risk and without liability or legal exposure to Engineer.
- 6.04 County shall also be the owner of all intellectual property rights of the services rendered hereunder, including all rights of copyright therein. County and Engineer agree that the services provided are a "work for hire" as the term is used in the federal Copyright Act. Moreover, Engineer's worldwide right, title and interest in and to such work product and all rights of copyright therein.
- 6.05 Any trademarks, trade names, service marks, logos, or copyrighted materials of County are permitted only for use in connection with the services and shall not be used without County's consent and shall remain in the sole and exclusive properties of County.

## SECTION VII PERSONNEL, EQUIPMENT, AND MATERIAL

- 7.01 Engineer represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the professional services required under this Agreement. Engineer shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment to perform the professional services when and as required and without delays.
- 7.02 County will approve assignment and release of all key Engineer personnel and that the Engineer shall submit written notification of all key Engineer personnel changes for the County's approval prior to the implementation of such changes. For the purpose of this agreement, key Engineer personnel are defined in Attachment C, Key Personnel. Services described in this Agreement shall be performed under the direction of an engineer licensed to practice professional engineering in the State of Texas.
- 7.03 All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them to the standard stated in this Agreement. Any employee of the Engineer who, in the opinion of the County, is incompetent or by his conduct becomes detrimental to the Project shall, upon request of the County, immediately be removed from association with the Project.
- 7.04 Except as otherwise specified herein, Engineer shall furnish all equipment, transportation, supplies, and materials required to provide all services subject to this Agreement.

## SECTION VIII ITEMS TO BE FURNISHED TO ENGINEER BY THE COUNTY

County shall provide to Engineer copies of preliminary studies, assistance in the coordination with all utility companies and assistance in coordination with all public and governmental entities.

## SECTION IX ENGINEER'S INSURANCE REQUIREMENTS

- 9.01 Engineer shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth below.

9.02 Engineer shall furnish certificates of insurance to County evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of Engineer, name of insurance company, policy number, term of coverage and limits of coverage. Engineer shall cause its insurance companies to provide County with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. Engineer shall obtain such insurance from such companies having Bests rating of A- or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

A. Workers' Compensation insurance in accordance with the laws of the State of Texas, or state or hire/location of Services, and Employers' Liability coverage with a limit of not less than \$500,000 each employee for Occupational Disease, \$500,000 policy limit for Occupational Disease; and Employer's Liability of \$500,000 each accident.

B. Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:

\$1,000,000	general aggregate limit
\$325,000	each occurrence, combined single limit
\$325,000	aggregate Products, combined single limit
\$325,000	aggregate Personal Injury/Advertising Liability
\$50,000	Fire Legal Liability
\$5,000	Premises Medical

C. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$300,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

D. Excess/Umbrella Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.

9.03 County and the County Commissioners shall be named as additional insureds on all coverages required above with the exception of Workers Compensation Insurance, Employers Liability Insurance and Professional Liability Insurance. The Workers Compensation Insurance written on behalf of Engineer shall contain a waiver of subrogation in favor of County and County Commissioners.

## SECTION X INDEMNIFICATION

10.01 ENGINEER SHALL INDEMNIFY, DEFEND AND HOLD COUNTY HARMLESS FROM EACH AND EVERY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING,

LIEN OR JUDGMENT CAUSED BY OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, OR IN CONNECTION WITH THE NEGLIGENT ACTS AND OMISSIONS OF ENGINEER PURSUANT TO THIS AGREEMENT.

- 10.02 Engineer shall timely report all such matters to County and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, not later than the fifteenth day of each month, provide County with a written report on each such matter covered by this paragraph and by Section 10.03 below, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of County required by Engineer in the defense of each matter.
- 10.03 County shall timely forward to ENGINEER copies of any and all claims, demands, suits, actions, proceedings or judgments which it may receive and which it may contend is covered by this section. Thereafter, County shall fully cooperate with Engineer in its defense of each such matter.
- 10.04 ENGINEER'S DUTY TO DEFEND INDEMNIFY AND HOLD COUNTY HARMLESS SHALL BE ABSOLUTE. IT SHALL NOT ABATE OR END BY REASON OF THE EXPIRATION OR TERMINATION OF THIS AGREEMENT UNLESS OTHERWISE AGREED BY COUNTY IN WRITING. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ALL SUCH MATTERS NO MATTER WHEN THEY ARISE.
- 10.05 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Engineer, Engineer shall nevertheless fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of Engineer are not at issue in the matter. In such event, County shall promptly reimburse Engineer for its costs of defense.
- 10.06 In the event that any such matter being so defended by Engineer also involves any claim of negligence or wrongful action by County, County shall have the obligation to participate in the defense of the matter through separate counsel.
- 10.07 Engineer shall have full authority to resolve all matters being defended by it providing such settlement(s) shall not involve any findings adverse to County and shall not involve or require any payments or contributions by County.
- 10.08 In the event of any final judicial determination or award of any matter covered by this section, County shall be responsible to third parties, pro rata, for any negligence determined to have been caused by County.
- 10.09 Engineer's indemnification shall cover, and Engineer shall indemnify County, in the manner provided for and to the extent described above, in the event County is found to have been negligent for having selected Engineer to perform the work described in this Agreement.
- 10.10 The provision by Engineer of insurance shall not limit the liability of Engineer under this Agreement.
- 10.11 Engineer shall cause all contractors and consultants who may have a contract to perform construction or installation work in the area where work will be performed under this Agreement, to agree to indemnify County and to hold County harmless from all claims

- for bodily injury and property damage that may arise from said contractor or consultant's operations. Such provisions shall be in form satisfactory to County.
- 10.12 County shall be exempt from, and in no way liable, for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Engineer providing such insurance.

## SECTION XI DISPUTE RESOLUTION

- 11.01 In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, County and Engineer agree to submit the dispute to mediation.
- 11.02 In the event County or Engineer desire to mediate any dispute, that party shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation.
- 11.03 All expenses associated with mediation shall be shared 50 percent (50%) by each party.
- 11.04 The requirement to seek mediation shall be a condition required before filing an action at law or in equity.

## XII NOTICE

- 12.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or Engineer at the addresses set forth below.
- 12.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 12.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to Engineer:

William Othon, P.E., President  
Othon, Inc.  
11111 Wilcrest Green Drive, Suite 1280  
Houston, Texas 77042

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

D. Jesse Hegemier  
County Engineer  
1124-52 Blume Road  
Rosenberg, Texas 77471

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

SECTION XIII  
REPORTS OF ACCIDENTS

- 13.01 Within 24 hours after the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of Engineer), Engineer shall send a written report of such accident or other event or County, setting forth a full and concise statement of the facts pertaining thereto.
- 13.02 Engineer shall also immediately send County a copy of any summons, subpoena, notice, other documents served upon Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from Engineer's performance of work under this Agreement.

SECTION XIV  
WORK AUTHORIZATIONS

- 14.01 County will issue Work Authorizations using the form included in Attachment B to authorize all work provided by Engineer under this agreement. Engineer must sign and return a work authorization to County within seven (7) working days after receipt. Refusal of Engineer to accept a Work Authorization shall be grounds for termination of this Agreement by County.
- 14.02 This Agreement authorizes County Project Manager to execute and approve all Work Authorizations on behalf of County.
- 14.03 Engineer shall not begin any work until County Project Manager and Engineer have executed a Work Authorization. Costs incurred by Engineer before a Work Authorization is fully executed or after the completion date specified in the Work Authorization shall not be subject to payment or reimbursement.
- 14.03 All services provided by Engineer must be completed on or before the completion date specified in the Work Authorization, and no Work Authorization completion date shall extend beyond the contract period set forth in Section III of this Agreement.
- 14.04 The maximum time is the time needed to complete all Work Authorizations that will be issued.
- 14.05 Each Work Authorization shall specify the types of services to be performed and will include: (A) a period of performance with a beginning and ending date; (B) a full description of the work to be performed; (C) a work schedule with milestones; (D) a cost not to exceed amount; (E) the basis of payment (i.e. cost plus fixed fee, unit cost, lump sum, or specified rate; and (F) a Work Authorization budget calculated using rates set forth in Attachment A, Basis of Fee Calculation.
- 14.06 Engineer shall not include additional terms and conditions in the Work Authorization. In the event of any conflicting terms and conditions between the Work Authorization and this Agreement, the terms and conditions of this Agreement shall prevail and govern the work and costs incurred.
- 14.07 A Work Authorization budget shall set forth in detail (A) the computations of the estimated cost of the work as described in the work authorization; (B) the estimated time (hours) required to complete the work at the hourly rates established in Attachment A, Basis of Fee Calculation; (C) a work plan that includes a list of the work to be performed; (D) a stated maximum number of calendar days to complete the work; and (E) a cost-not-

- to-exceed-amount or unit or lump sum cost and the total cost or price of the Work Authorization.
- 14.08 County will not pay any items of cost that are not included in an executed Work Authorization.
- 14.09 Work Authorizations are issued at the discretion of County. While it is County's intent to issue Work Authorizations hereunder, Engineer shall have no cause of action conditioned upon the lack or number of Work Authorizations issued.
- 14.10 Each work authorization shall be signed by all parties and shall become a part of this Agreement. No work authorizations will waive County or Engineer's responsibilities and obligations established in this Agreement. Engineer shall promptly notify County of any event that will affect completion of the Work Authorization.
- 14.11 Before additional work may be performed or additional costs incurred, a change in a Work Authorization shall be enacted by a written Supplemental Work Authorization in the form identified and attached hereto as Attachment B. All parties must execute a Supplemental Work Authorization within the period of performance specified in the Work Authorization. County shall not be responsible for actions by Engineer or any costs incurred by Engineer relating to additional work not directly associated with the performance or prior to the execution of the Work Authorization. Engineer shall allow adequate time for review and approval of the Supplemental Work Authorization by County prior to expiration of the Work Authorization. Under no circumstances shall a Work Authorization be allowed to extend beyond this Agreement's expiration date as detailed in Section III, nor will the total amount of funds exceed the not-to-exceed amount set forth in Section II of this Agreement.
- 14.12 In the event Engineer determines or reasonably anticipates that the work authorized in a Work Authorization cannot be completed before the specified completion date, Engineer shall promptly notify County and County may, at its sole discretion, extend the Work Authorization period by execution of Supplemental Work Authorization, using the form attached hereto at Attachment B.
- 14.13 Any changes that may modify the scope of services authorized in a Work Authorization must be enacted by a written Supplemental Work Authorization. Engineer shall allow adequate time for County to review and approve any request for a time extension prior to expiration of the Work Authorization. If the change in scope affects the amount payable under the Work Authorization, Engineer shall prepare a revised work authorization budget for County's consideration.
- 14.14 In the event Engineer does not complete the services authorized in a Work Authorization before the specified completion date and has not requested a Supplemental Work Authorization, the Work Authorization shall terminate on the completion date. At the sole discretion of County, County may issue a new Work Authorization to Engineer for the incomplete work using the unexpended balance of the preceding Work Authorization for the project. If approved by County, Engineer may calculate any additional cost for the incomplete work using the rates set forth Attachment A.
- 14.15 County, at its sole discretion, may accept Engineer's signature on a faxed copy of the work authorization as satisfying the requirements for executing the Work Authorization, provided that the signed original is received by County within five business days from the date on the faxed copy. Any payments owed to Engineer by County shall not be processed until the requirements of this Section have been fulfilled by Engineer.

- 14.16 Upon satisfactory completion of the Work Authorization as determined by County, Engineer shall submit the deliverables as specified in the executed Work Authorization to County for review and acceptance.

SECTION XV  
LIMITATIONS

Notwithstanding anything herein to the contrary, all covenants and obligations of County under this Agreement shall be deemed to be valid covenants and obligations only to extent authorized by the Act creating County and permitted by the laws and the Constitution of the State of Texas. This Agreement shall be governed by the laws of the State of Texas, and no officer, director, or employee of County shall have any personal obligation hereunder.

SECTION XVI  
LIMIT OF APPROPRIATION

- 16.01 Prior to the execution of this Agreement, Engineer has been advised by County, and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that County shall have available the total maximum sum of \$740,000.00, including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by County.
- 16.02 Engineer does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Engineer may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$740,000.00 for described scope of services in all executed Work Authorizations.

SECTION XVII  
SUCCESSORS AND ASSIGNS

- 17.01 County 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 such other party, in respect to all covenants of this Agreement.
- 17.02 Neither County nor Engineer shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other.

SECTION XVIII  
PUBLIC CONTACT

- 18.01 Contact with any media, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of County.
- 18.02 Under no circumstances, whatsoever, shall Engineer release any material or information developed or received from County in the performance of its services hereunder without the express written permission of County, except where required to do so by law.

SECTION XIX  
MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XX  
MISCELLANEOUS

- 20.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 20.02 Nothing contained in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 20.03 Engineer agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; Engineer and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 20.04 The captions of subtitle of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.
- 20.05 This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.
- 20.06 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 the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

SECTION XXI  
APPENDICES

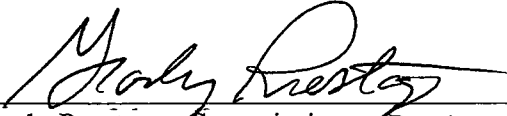
The Appendices attached to this Agreement, which consists of the following and are incorporated herein by reference as if set forth verbatim:

Attachment A	Basis of Fee Calculation
Attachment B	Sample Work Authorization
Attachment C	Key Personnel

SECTION XXII  
EXECUTION

This Agreement shall not become effective until executed by all parties hereto.

FORT BEND COUNTY:

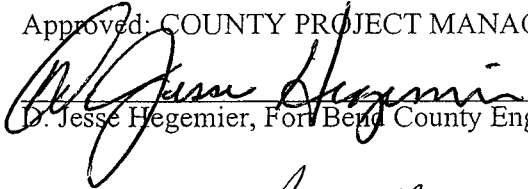
  
\_\_\_\_\_  
Grady Prestage, Commissioner, Precinct 2  
Presiding Officer, Commissioners Court, April 22, 2008

4-22-08  
Date

Attest:

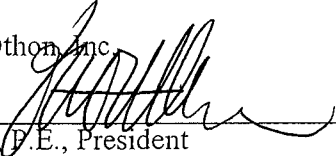
  
\_\_\_\_\_  
Dianne Wilson, County Clerk

Approved: COUNTY PROJECT MANAGER

  
\_\_\_\_\_  
D. Jesse Hegemier, Fort Bend County Engineer

4/15/08  
Date

ENGINEER: Othon, Inc.

  
\_\_\_\_\_  
William Othon, P.E., President

Date

4/9/08

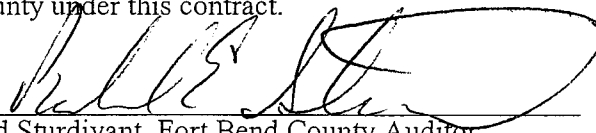
Attest:

  
\_\_\_\_\_  
**Rita Rowan, Secretary**

MER:Engineering Services Agreement.Othon.3791-747

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$740,000.00 to accomplish and pay the obligation of the Fort Bend County under this contract.

  
\_\_\_\_\_  
Ed Sturdivant, Fort Bend County Auditor

**ATTACHMENT A  
BASIS OF FEE CALCULATION**

**Prime Consultant:** Othon, Inc.

LABOR RATE	<u>Classification</u>	<u>Rate</u>
	Sr. Project Manager	\$58.68
	QA/QC Engineer	\$44.56
	Project Manager	\$55.29
	Sr. Project Engineer	\$54.99
	Project Engineer	\$44.56
	Sr. Design Tech/EIT	\$28.89
	Sr. EIT	\$32.96
	Sr. CADD Tech	\$33.99
	CADD Tech	\$30.00
	Tech II	\$28.00
	Tech I	\$21.52
	Administrative	\$24.92

OVERHEAD RATE 156.00%

OPERATING MARGIN 12%

**Major Subconsultant:** Lippke, Cartwright & Roberts, Inc.

LABOR RATE	<u>Classification</u>	<u>Rate</u>
	Principal	\$57.69
	Project Manager	\$36.05
	Sr. Staff Engineer III	\$0.00
	Sr. Staff Engineer II	\$0.00
	Sr. Staff Engineer I	\$36.05
	Staff Engineer III	\$0.00
	Staff Engineer II	\$28.33
	Staff Engineer I	\$0.00
	Tech III	\$0.00
	Tech II	\$0.00
	Tech I	\$20.00
	Clerical	\$13.33

OVERHEAD RATE 160.00%

OPERATING MARGIN 12%

**ATTACHMENT B**  
**B-1**  
**WORK AUTHORIZATION NO. \_\_\_\_**  
**AGREEMENT FOR ENGINEERING SERVICES**

**THIS WORK AUTHORIZATION** is made pursuant to the terms and conditions of Section XIV of Professional Engineering Services Agreement entered into by and between Fort Bend County, and \_\_\_\_\_ (the Engineer), on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**PART I.** The Engineer will perform engineering services generally described as \_\_\_\_\_ in accordance with the project description attached hereto and made a part of this Work Authorization. The Engineer's Scope of Work, Labor Estimate, and Schedule are further detailed in Exhibits A, B and C, respectively, which are attached hereto and made a part of the Work Authorization.

**PART II.** The maximum amount payable under this Work Authorization is \$ \_\_\_\_\_. This amount is based upon fees set forth in Attachment A, Basis of Fee Calculation, of the Agreement and the Engineer's estimated Work Authorization costs included in Exhibit B, Labor Estimate, which is attached and made a part of this Work Authorization.

**PART III.** Payment to the Engineer for the services established under this Work Authorization shall be made in accordance with Section II of the Agreement.

**PART IV.** This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate on \_\_\_\_\_, unless extended by a supplemental Work Authorization as provided in the Agreement.

**PART V.** This Work Authorization does not waive the parties' responsibilities and obligations provided under the Agreement.

**IN WITNESS WHEREOF**, this Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below.

**THE ENGINEER**

**FORT BEND COUNTY, TEXAS**

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title)  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title)  
\_\_\_\_\_  
(Date)

**LIST OF EXIBITS**

Exhibit A            Scope of Work  
Exhibit B            Labor Estimate  
Exhibit C            Schedule

**ATTACHMENT B**  
**B-2**  
**SUPPLEMENTAL WORK AUTHORIZATION NO. \_\_\_\_**  
**AGREEMENT FOR ENGINEERING SERVICES**

**THIS SUPPLEMENTAL WORK AUTHORIZATION** is made pursuant to the terms and conditions of hereinafter identified as the "Agreement," entered into by and between Fort Bend County, and \_\_\_\_\_ (the Engineer).

The following terms and conditions of Work Authorization No. \_\_\_\_ are hereby amended as follows:

This Supplemental Work Authorization shall become effective on the date of final execution of the parties hereto. All other terms and conditions of Work Authorization No. \_\_\_\_ not hereby amended are to remain in full force and effect.

**IN WITNESS WHEREOF**, this Supplemental Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below.

**THE ENGINEER**

**FORT BEND COUNTY, TEXAS**

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title)  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title)  
\_\_\_\_\_  
(Date)

**ATTACHMENT C  
KEY PERSONNEL**

F. William Othon, P.E. - Principal

James Darden, P.E. - Project Manager

Ruperto Arismendez, P.E. - Project Engineer

Bernard Murphy, P.E. - Project Engineer (subconsultant)



not under any conditions, circumstances or interpretations thereof exceed the sum of \$770,000.00 for described scope of services in all executed Work Authorizations.”

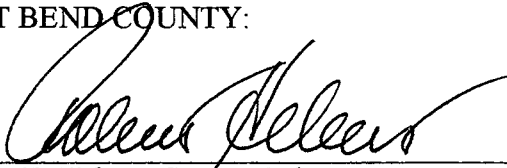
3. Attached hereto is Exhibit A – letter from Schaumberg & Polk dated July 30, 2008 regarding the increase, and Exhibit B – the Agreement approved by County on April 22, 2008, incorporated by reference as if set forth therein verbatim for all purposes.
4. Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended.
5. If there is a conflict between this Amendment and the Agreement, the provisions of this Amendment shall prevail.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

EXECUTION

This Amendment shall not become effective until executed by all parties hereto.

FORT BEND COUNTY:



Robert E. Hebert, County Judge

8-6-08

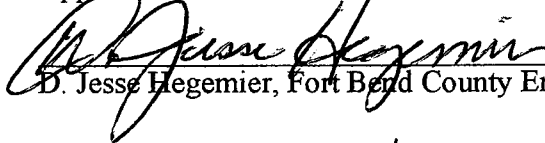
Date

Attest:



Dianne Wilson, County Clerk

Approved: COUNTY PROJECT MANAGER

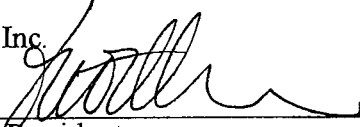


D. Jesse Hegemier, Fort Bend County Engineer

7/31/08

Date

ENGINEER: Othon, Inc.



William Othon, P.E., President

Date

July 30, 2008

Attest:



Rita Rowan, Controller/Secretary

MER:Engineering Services Agreement.Othon.3791-747- 1<sup>st</sup> Amendment

Attachments: Exhibit A & B

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$770,000.00 to accomplish and pay the obligation of the Fort Bend County under this contract.

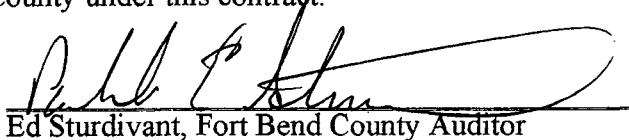
  
Ed Sturdivant, Fort Bend County Auditor

EXHIBIT A



July 30, 2008

Mr. D. Jesse Hegemier, P.E.  
County Engineer  
Fort Bend County  
1124 Blume Road  
Rosenberg, Texas 77471

Re: Ransom Road (FBC Project No. 747)  
Contract Amendment for Othon, Inc.

Project No. 300701.12


Dear Mr. Hegemier:

At the request of the County Judge, Othon, Inc. has submitted a fee proposal to prepare a traffic impact analysis (TIA) for the Ransom Road project. The TIA would consider traffic impacts of the existing jail, proposed jail expansion, and proposed courthouse annex complex to mobility along Ransom Road, and analyze improvement alternatives at Ransom Road's intersection with F.M. 762. The TIA will serve two purposes: first, to satisfy the City of Richmond's requirements for a TIA related to the courthouse annex complex, and second, to analyze alternatives and prepare recommendations for improvements to the Ransom Road / F.M. 762 intersection. The City of Richmond is considering financial participation in the roadway improvements (including the intersection) within their city limits.

Preparation of a TIA was not considered in the original negotiations with Othon. A contract supplement will therefore be required to add this service. They have prepared a fee estimate resulting in the need for a contract fee increase in the amount of \$30,000.00. We have reviewed the scope and fee estimate, and recommend approval of the supplement.

Please call me if you have any questions.

Sincerely,

  
For Mark C. Dessens, P.E.  
Project Manager

MCD/bl

**EXHIBIT B**

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND §

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
PROJECT NO. 747 – RANSOM ROAD**

**THIS AGREEMENT** is made and entered into by and between FORT BEND COUNTY, TEXAS, a public body corporate and politic of the State of Texas acting by and through the Fort Bend County Commissioners Court (hereinafter referred to as “County”) and OTHON, INC., (hereinafter referred to as “Engineer,”) authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County proposes to expand Ransom Road, Project No. 747, located in Fort Bend County, Texas, as part of the 2007 Fort Bend County Mobility Programs, hereinafter referred to as the “Project;” and,

WHEREAS, County desires to enter into this Agreement for the performance by Engineer of professional services related to the Project; and,

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, TEXAS LOCAL GOVERNMENT CODE; and

WHEREAS, County has determined that this Agreement serves a public purpose.

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

**AGREEMENT**

SECTION I  
SCOPE OF AGREEMENT

- 1.01 Engineer shall render professional services to County related to the Project as described in each executed Work Authorization, a sample of which is attached as Attachment B.
- 1.02 Engineer shall use all best efforts to perform all professional services agreed hereunder in a manner satisfactory and acceptable to County, in keeping with the highest professional standard of care provided by engineers in similar projects. Engineer shall use its best efforts to ensure that all services provided hereunder shall be suitable for their intended use.
- 1.03 Engineer shall use all best efforts and measures to implement its responsibilities under this Agreement to safeguard County against defects and deficiencies in the completed services provided under this Agreement. However, Engineer will promptly inform

County whenever defects and deficiencies in the completed service are observed, or when any observed actions or omissions are undertaken which are not in the best interest of County and the Project.

- 1.04 At the request of County, Engineer shall provide appropriate personnel for conferences at its offices, or attend conferences at the various offices of County, or at the site of the Project, and shall permit inspections of its offices by County, or others when requested by County.
- 1.05 If requested by County, or on its behalf, Engineer shall prepare such engineering exhibits and plans as may be requested for all hearings related to the Project, and, further, it shall prepare for and appear at conferences at the office of the County's Engineer, hereinafter referred to as "County Project Manager," and shall furnish competent expert engineering witnesses to provide such oral testimony and to introduce such demonstrative evidence as may be needed throughout all trials and hearings with reference to any litigation relating to the Project.

## SECTION II THE ENGINEER'S COMPENSATION

- 2.01 For and in consideration of the services rendered by Engineer, and subject to the limit of appropriation under Section XVI, County shall pay to Engineer an amount not to exceed \$740,000.00, including all reimbursable expenses.
- 2.02 Progress payments for authorized work detailed in Work Authorizations will be made when Engineer has attained a level of completion equal to or greater than agreed upon milestones of completion, as determined solely by County.
- 2.03 Engineer shall not provide any services under this Agreement until authorized by County in writing.
- 2.04 Engineer shall submit invoices to County as detailed in Section 2.05 below and County shall pay each invoice within thirty (30) days after the County Project Manager's written approval provided however, that the approval or payment of any invoice shall not be considered to be conclusive evidence of performance by the Engineer to the point indicated by such invoice or of receipt or acceptance by the County of the services covered by such invoice.
- 2.05 Engineer shall submit to County two (2) copies of invoices detailing the amounts due for services performed during the previous month, set forth separately for work under this Agreement, and accompanied by a progress report indicating the percent complete for the Schedule of Values describing the tasks performed in all applicable Work Authorizations in a form acceptable to County. County shall reserve the right to withhold any payment pending verification of satisfactory work performed. County shall process all uncontested invoices within thirty (30) calendar days.

## SECTION III TIME OF PERFORMANCE

- 3.01 This Agreement shall become effective upon execution of the last party and shall terminate on or before December 31, 2009.
- 3.02 Services described under written Work Authorizations shall be completed in accordance with the schedules provided in said Work Authorizations or within such additional time as may be extended in writing by the County.

- 3.03 Any services provided by Engineer or any costs incurred by Engineer before issuance of a Work Authorization or after the expiration of a Work Authorization shall be ineligible for payment or reimbursement.

#### SECTION IV TERMINATION

- 4.01 County may terminate this Agreement at any time by providing thirty (30) days written notice to Engineer.
- 4.02 Upon receipt of such termination notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 4.03 Within thirty (30) days after receipt of notice of termination, Engineer shall submit a statement, describing in detail the services performed under this Agreement to the date of termination.
- 4.04 County shall then pay Engineer that proportion of the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.
- 4.05 Copies of all completed or partially completed designs, drawings, electronic data files and specifications and reports of any kind prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

#### SECTION V INSPECTIONS OF ENGINEER'S BOOKS AND RECORDS

Engineer shall permit County, or any duly authorized agent of the County, to inspect and examine all books and records of the Engineer for the purpose of verifying the amount of work performed on the Project by Engineer. County's right to inspect survives the termination of this Agreement for a period of four (4) years.

#### SECTION VI OWNERSHIP AND REUSE OF DOCUMENTS

- 6.01 All documents, including original drawings, electronic files, correspondence, estimates, specifications, field notes, and data created, produced, developed or prepared by Engineer or its approved outside advisory or support consultants (collectively, the "Documents") shall be the property of County.
- 6.02 County shall not be entitled to any Documents not deemed "final" by the Engineer until termination of this Agreement.
- 6.03 Engineer shall deliver all Documents to County within thirty (30) days of the termination of this Agreement and may retain a set of reproducible record copies of the documents, provided that Engineer has received full compensation due pursuant to the terms of this Agreement. County shall use the Documents solely in connection with the Project and for no other purposes, except with the express written consent of Engineer, which consent will not be unreasonably withheld. Any use of the Documents without the express written

consent of the Engineer will be at the County's sole risk and without liability or legal exposure to Engineer.

- 6.04 County shall also be the owner of all intellectual property rights of the services rendered hereunder, including all rights of copyright therein. County and Engineer agree that the services provided are a "work for hire" as the term is used in the federal Copyright Act. Moreover, Engineer's worldwide right, title and interest in and to such work product and all rights of copyright therein.
- 6.05 Any trademarks, trade names, service marks, logos, or copyrighted materials of County are permitted only for use in connection with the services and shall not be used without County's consent and shall remain in the sole and exclusive properties of County.

#### SECTION VII PERSONNEL, EQUIPMENT, AND MATERIAL

- 7.01 Engineer represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the professional services required under this Agreement. Engineer shall furnish and maintain, at its own expense, adequate and sufficient personnel and equipment to perform the professional services when and as required and without delays.
- 7.02 County will approve assignment and release of all key Engineer personnel and that the Engineer shall submit written notification of all key Engineer personnel changes for the County's approval prior to the implementation of such changes. For the purpose of this agreement, key Engineer personnel are defined in Attachment C, Key Personnel. Services described in this Agreement shall be performed under the direction of an engineer licensed to practice professional engineering in the State of Texas.
- 7.03 All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them to the standard stated in this Agreement. Any employee of the Engineer who, in the opinion of the County, is incompetent or by his conduct becomes detrimental to the Project shall, upon request of the County, immediately be removed from association with the Project.
- 7.04 Except as otherwise specified herein, Engineer shall furnish all equipment, transportation, supplies, and materials required to provide all services subject to this Agreement.

#### SECTION VIII ITEMS TO BE FURNISHED TO ENGINEER BY THE COUNTY

County shall provide to Engineer copies of preliminary studies, assistance in the coordination with all utility companies and assistance in coordination with all public and governmental entities.

#### SECTION IX ENGINEER'S INSURANCE REQUIREMENTS

- 9.01 Engineer shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth below.

9.02 Engineer shall furnish certificates of insurance to County evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of Engineer, name of insurance company, policy number, term of coverage and limits of coverage. Engineer shall cause its insurance companies to provide County with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. Engineer shall obtain such insurance from such companies having Bests rating of A- or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

A. Workers' Compensation insurance in accordance with the laws of the State of Texas, or state or hire/location of Services, and Employers' Liability coverage with a limit of not less than \$500,000 each employee for Occupational Disease, \$500,000 policy limit for Occupational Disease; and Employer's Liability of \$500,000 each accident.

B. Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability Broad Form Property Damage, Personal Injury/Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:

\$1,000,000	general aggregate limit
\$325,000	each occurrence, combined single limit
\$325,000	aggregate Products, combined single limit
\$325,000	aggregate Personal Injury/Advertising Liability
\$50,000	Fire Legal Liability
\$5,000	Premises Medical

C. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$300,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

D. Excess/Umbrella Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.

9.03 County and the County Commissioners shall be named as additional insureds on all coverages required above with the exception of Workers Compensation Insurance, Employers Liability Insurance and Professional Liability Insurance. The Workers Compensation Insurance written on behalf of Engineer shall contain a waiver of subrogation in favor of County and County Commissioners.

## SECTION X INDEMNIFICATION

10.01 ENGINEER SHALL INDEMNIFY, DEFEND AND HOLD COUNTY HARMLESS FROM EACH AND EVERY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING,

- for bodily injury and property damage that may arise from said contractor or consultant's operations. Such provisions shall be in form satisfactory to County.
- 10.12 County shall be exempt from, and in no way liable, for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Engineer providing such insurance.

SECTION XI  
DISPUTE RESOLUTION

- 11.01 In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, County and Engineer agree to submit the dispute to mediation.
- 11.02 In the event County or Engineer desire to mediate any dispute, that party shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within 10 days of the receipt of such notice, such dispute shall be submitted for mediation.
- 11.03 All expenses associated with mediation shall be shared 50 percent (50%) by each party.
- 11.04 The requirement to seek mediation shall be a condition required before filing an action at law or in equity.

XII  
NOTICE

- 12.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or Engineer at the addresses set forth below.
- 12.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 12.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to Engineer:

William Othon, P.E., President  
Othon, Inc.  
11111 Wilcrest Green Drive, Suite 1280  
Houston, Texas 77042

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

D. Jesse Hegemier  
County Engineer  
1124-52 Blume Road  
Rosenberg, Texas 77471

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

SECTION XIII  
REPORTS OF ACCIDENTS

- 13.01 Within 24 hours after the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any third person (other than an employee of Engineer), Engineer shall send a written report of such accident or other event or County, setting forth a full and concise statement of the facts pertaining thereto.
- 13.02 Engineer shall also immediately send County a copy of any summons, subpoena, notice, other documents served upon Engineer, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from Engineer's performance of work under this Agreement.

SECTION XIV  
WORK AUTHORIZATIONS

- 14.01 County will issue Work Authorizations using the form included in Attachment B to authorize all work provided by Engineer under this agreement. Engineer must sign and return a work authorization to County within seven (7) working days after receipt. Refusal of Engineer to accept a Work Authorization shall be grounds for termination of this Agreement by County.
- 14.02 This Agreement authorizes County Project Manager to execute and approve all Work Authorizations on behalf of County.
- 14.03 Engineer shall not begin any work until County Project Manager and Engineer have executed a Work Authorization. Costs incurred by Engineer before a Work Authorization is fully executed or after the completion date specified in the Work Authorization shall not be subject to payment or reimbursement.
- 14.03 All services provided by Engineer must be completed on or before the completion date specified in the Work Authorization, and no Work Authorization completion date shall extend beyond the contract period set forth in Section III of this Agreement.
- 14.04 The maximum time is the time needed to complete all Work Authorizations that will be issued.
- 14.05 Each Work Authorization shall specify the types of services to be performed and will include: (A) a period of performance with a beginning and ending date; (B) a full description of the work to be performed; (C) a work schedule with milestones; (D) a cost not to exceed amount; (E) the basis of payment (i.e. cost plus fixed fee, unit cost, lump sum, or specified rate; and (F) a Work Authorization budget calculated using rates set forth in Attachment A, Basis of Fee Calculation.
- 14.06 Engineer shall not include additional terms and conditions in the Work Authorization. In the event of any conflicting terms and conditions between the Work Authorization and this Agreement, the terms and conditions of this Agreement shall prevail and govern the work and costs incurred.
- 14.07 A Work Authorization budget shall set forth in detail (A) the computations of the estimated cost of the work as described in the work authorization; (B) the estimated time (hours) required to complete the work at the hourly rates established in Attachment A, Basis of Fee Calculation; (C) a work plan that includes a list of the work to be performed; (D) a stated maximum number of calendar days to complete the work; and (E) a cost-not-

- to-exceed-amount or unit or lump sum cost and the total cost or price of the Work Authorization.
- 14.08 County will not pay any items of cost that are not included in an executed Work Authorization.
- 14.09 Work Authorizations are issued at the discretion of County. While it is County's intent to issue Work Authorizations hereunder, Engineer shall have no cause of action conditioned upon the lack or number of Work Authorizations issued.
- 14.10 Each work authorization shall be signed by all parties and shall become a part of this Agreement. No work authorizations will waive County or Engineer's responsibilities and obligations established in this Agreement. Engineer shall promptly notify County of any event that will affect completion of the Work Authorization.
- 14.11 Before additional work may be performed or additional costs incurred, a change in a Work Authorization shall be enacted by a written Supplemental Work Authorization in the form identified and attached hereto as Attachment B. All parties must execute a Supplemental Work Authorization within the period of performance specified in the Work Authorization. County shall not be responsible for actions by Engineer or any costs incurred by Engineer relating to additional work not directly associated with the performance or prior to the execution of the Work Authorization. Engineer shall allow adequate time for review and approval of the Supplemental Work Authorization by County prior to expiration of the Work Authorization. Under no circumstances shall a Work Authorization be allowed to extend beyond this Agreement's expiration date as detailed in Section III, nor will the total amount of funds exceed the not-to-exceed amount set forth in Section II of this Agreement.
- 14.12 In the event Engineer determines or reasonably anticipates that the work authorized in a Work Authorization cannot be completed before the specified completion date, Engineer shall promptly notify County and County may, at its sole discretion, extend the Work Authorization period by execution of Supplemental Work Authorization, using the form attached hereto at Attachment B.
- 14.13 Any changes that may modify the scope of services authorized in a Work Authorization must be enacted by a written Supplemental Work Authorization. Engineer shall allow adequate time for County to review and approve any request for a time extension prior to expiration of the Work Authorization. If the change in scope affects the amount payable under the Work Authorization, Engineer shall prepare a revised work authorization budget for County's consideration.
- 14.14 In the event Engineer does not complete the services authorized in a Work Authorization before the specified completion date and has not requested a Supplemental Work Authorization, the Work Authorization shall terminate on the completion date. At the sole discretion of County, County may issue a new Work Authorization to Engineer for the incomplete work using the unexpended balance of the preceding Work Authorization for the project. If approved by County, Engineer may calculate any additional cost for the incomplete work using the rates set forth Attachment A.
- 14.15 County, at its sole discretion, may accept Engineer's signature on a faxed copy of the work authorization as satisfying the requirements for executing the Work Authorization, provided that the signed original is received by County within five business days from the date on the faxed copy. Any payments owed to Engineer by County shall not be processed until the requirements of this Section have been fulfilled by Engineer.

- 14.16 Upon satisfactory completion of the Work Authorization as determined by County, Engineer shall submit the deliverables as specified in the executed Work Authorization to County for review and acceptance.

#### SECTION XV LIMITATIONS

Notwithstanding anything herein to the contrary, all covenants and obligations of County under this Agreement shall be deemed to be valid covenants and obligations only to extent authorized by the Act creating County and permitted by the laws and the Constitution of the State of Texas. This Agreement shall be governed by the laws of the State of Texas, and no officer, director, or employee of County shall have any personal obligation hereunder.

#### SECTION XVI LIMIT OF APPROPRIATION

- 16.01 Prior to the execution of this Agreement, Engineer has been advised by County, and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that County shall have available the total maximum sum of \$740,000.00, including reimbursable expenses, if any, specifically allocated to fully discharge any and all liabilities which may be incurred by County.
- 16.02 Engineer does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Engineer may become entitled to hereunder and the total maximum sum that County shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$740,000.00 for described scope of services in all executed Work Authorizations.

#### SECTION XVII SUCCESSORS AND ASSIGNS

- 17.01 County 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 such other party, in respect to all covenants of this Agreement.
- 17.02 Neither County nor Engineer shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other.

#### SECTION XVIII PUBLIC CONTACT

- 18.01 Contact with any media, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of County.
- 18.02 Under no circumstances, whatsoever, shall Engineer release any material or information developed or received from County in the performance of its services hereunder without the express written permission of County, except where required to do so by law.

SECTION XIX  
MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XX  
MISCELLANEOUS

- 20.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 20.02 Nothing contained in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 20.03 Engineer agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Offices has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; Engineer and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 20.04 The captions of subtitle of the several sections and divisions of this Agreement constitute no part of the content hereof, but are only labels to assist in locating and reading the provisions hereof.
- 20.05 This Agreement shall be governed and construed in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.
- 20.06 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 if 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 the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

SECTION XXI  
APPENDICES

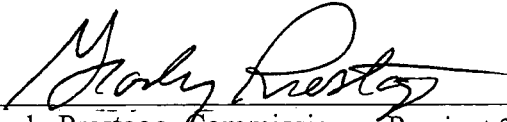
The Appendices attached to this Agreement, which consists of the following and are incorporated herein by reference as if set forth verbatim:

Attachment A	Basis of Fee Calculation
Attachment B	Sample Work Authorization
Attachment C	Key Personnel

SECTION XXII  
EXECUTION

This Agreement shall not become effective until executed by all parties hereto.

FORT BEND COUNTY:

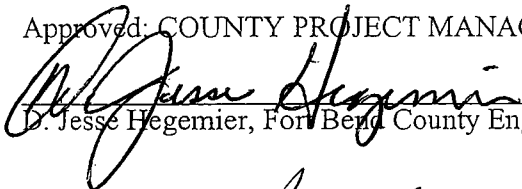
  
\_\_\_\_\_  
Grady Prestage, Commissioner, Precinct 2  
Presiding Officer, Commissioners Court, April 22, 2008

4-22-08  
Date

Attest:

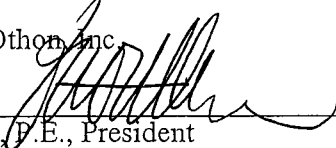
  
\_\_\_\_\_  
Dianne Wilson, County Clerk

Approved: COUNTY PROJECT MANAGER

  
\_\_\_\_\_  
D. Jesse Hegemier, Fort Bend County Engineer

4/15/08  
Date


ENGINEER: Othon, Inc.

  
\_\_\_\_\_  
William Othon, P.E., President

Date

4/8/08

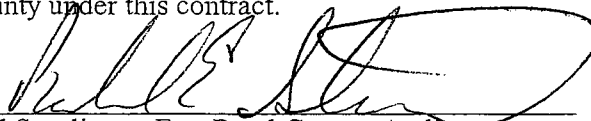
Attest:

  
\_\_\_\_\_  
**Rita Rowan, Secretary**

MER:Engineering Services Agreement.Othon.3791-747

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$740,000.00 to accomplish and pay the obligation of the Fort Bend County under this contract.

  
\_\_\_\_\_  
Ed Sturdivant, Fort Bend County Auditor

**ATTACHMENT A  
BASIS OF FEE CALCULATION**

**Prime Consultant:** Othon, Inc.

LABOR RATE	<u>Classification</u>	<u>Rate</u>
	Sr. Project Manager	\$58.68
	QA/QC Engineer	\$44.56
	Project Manager	\$55.29
	Sr. Project Engineer	\$54.99
	Project Engineer	\$44.56
	Sr. Design Tech/EIT	\$28.89
	Sr. EIT	\$32.96
	Sr. CADD Tech	\$33.99
	CADD Tech	\$30.00
	Tech II	\$28.00
	Tech I	\$21.52
	Administrative	\$24.92

OVERHEAD RATE 156.00%

OPERATING MARGIN 12%

**Major Subconsultant:** Lippke, Cartwright & Roberts, Inc.

LABOR RATE	<u>Classification</u>	<u>Rate</u>
	Principal	\$57.69
	Project Manager	\$36.05
	Sr. Staff Engineer III	\$0.00
	Sr. Staff Engineer II	\$0.00
	Sr. Staff Engineer I	\$36.05
	Staff Engineer III	\$0.00
	Staff Engineer II	\$28.33
	Staff Engineer I	\$0.00
	Tech III	\$0.00
	Tech II	\$0.00
	Tech I	\$20.00
	Clerical	\$13.33

OVERHEAD RATE 160.00%

OPERATING MARGIN 12%

**ATTACHMENT B**  
**B-1**  
**WORK AUTHORIZATION NO. \_\_\_\_**  
**AGREEMENT FOR ENGINEERING SERVICES**

**THIS WORK AUTHORIZATION** is made pursuant to the terms and conditions of Section XIV of Professional Engineering Services Agreement entered into by and between Fort Bend County, and \_\_\_\_\_ (the Engineer), on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**PART I.** The Engineer will perform engineering services generally described as \_\_\_\_\_ in accordance with the project description attached hereto and made a part of this Work Authorization. The Engineer's Scope of Work, Labor Estimate, and Schedule are further detailed in Exhibits A, B and C, respectively, which are attached hereto and made a part of the Work Authorization.

**PART II.** The maximum amount payable under this Work Authorization is \$ \_\_\_\_\_. This amount is based upon fees set forth in Attachment A, Basis of Fee Calculation, of the Agreement and the Engineer's estimated Work Authorization costs included in Exhibit B, Labor Estimate, which is attached and made a part of this Work Authorization.

**PART III.** Payment to the Engineer for the services established under this Work Authorization shall be made in accordance with Section II of the Agreement.

**PART IV.** This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate on \_\_\_\_\_, unless extended by a supplemental Work Authorization as provided in the Agreement.

**PART V.** This Work Authorization does not waive the parties' responsibilities and obligations provided under the Agreement.

**IN WITNESS WHEREOF**, this Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below.

**THE ENGINEER**

**FORT BEND COUNTY, TEXAS**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**LIST OF EXIBITS**

Exhibit A	Scope of Work
Exhibit B	Labor Estimate
Exhibit C	Schedule

**ATTACHMENT B**  
**B-2**  
**SUPPLEMENTAL WORK AUTHORIZATION NO. \_\_\_\_**  
**AGREEMENT FOR ENGINEERING SERVICES**

**THIS SUPPLEMENTAL WORK AUTHORIZATION** is made pursuant to the terms and conditions of hereinafter identified as the "Agreement," entered into by and between Fort Bend County, and \_\_\_\_\_ (the Engineer).

The following terms and conditions of Work Authorization No. \_\_\_\_ are hereby amended as follows:

This Supplemental Work Authorization shall become effective on the date of final execution of the parties hereto. All other terms and conditions of Work Authorization No. \_\_\_\_ not hereby amended are to remain in full force and effect.

**IN WITNESS WHEREOF**, this Supplemental Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below.

**THE ENGINEER**

**FORT BEND COUNTY, TEXAS**

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title)  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name)  
\_\_\_\_\_  
(Title)  
\_\_\_\_\_  
(Date)

**ATTACHMENT C  
KEY PERSONNEL**

F. William Othon, P.E. - Principal

James Darden, P.E. - Project Manager

Ruperto Arismendez, P.E. - Project Engineer

Bernard Murphy, P.E. - Project Engineer (subconsultant)