

AGENDA ITEM **D4**

ARF-11548

## DRAINAGE DISTRICT AGENDA

Meeting  
Date: 08/27/2013

## Interlocal Agreement, Ditch H Engineering Report

Submitted Mark Vogler  
For:Submitted RoseAnn Vargas, Drainage  
By: District

Department: Drainage District

Renewal No

Agreement/  
Appointment:Reviewed  
by County  
Attorney's  
Office:

Yes

Multiple Yes (4)  
Originals  
Y/N?:

## Information

## SUMMARY OF ITEM

Take all appropriate action on Interlocal Agreement between Fort Bend County Levee Improvement District #2, Fort Bend County Levee Improvement District #17, City of Sugar Land, and the Fort Bend County Drainage District to contract for Engineering Services related to developing a preliminary Engineering Report which evaluates options to repair sloughing along Ditch H in Precinct 4. (Fund: Upper Oyster Creek)

## SPECIAL HANDLING

Return (4) originals to Rose Ann Vargas ← 8-24-13

## Fiscal Impact

ACCTG UNIT or  
GRANT/PROJ 160620888  
NAME:ACCT NAME or  
GRANT/PROJ P620-96UPOYSTER  
ACTIVITY:

BUDGETED Y/N: No

FISCAL SUMMARY:

Upper Oyster Creek

## Attachments

Interlocal Agreement

INTERLOCAL AGREEMENT  
FOR THE PRELIMINARY ENGINEERING REPORT  
TO DETERMINE THE COST AND SCOPE OF WORK  
NECESSARY TO REPAIR DITCH H

This Interlocal Agreement for the Preliminary Engineering Report to Determine the Cost and Scope of Work Necessary to Repair Ditch H (the "Agreement") is made and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between **Fort Bend County Levee Improvement District No. 17** ("LID 17"), a political subdivision of the State of Texas organized and operating pursuant to Chapters 49 and 57 of the Texas Water Code, as amended, and Article XVI, Section 59, Texas Constitution, **Fort Bend County Levee Improvement District No. 2** ("LID 2"), a political subdivision of the State of Texas organized and operating pursuant to Chapters 49 and 57 of the Texas Water Code, as amended, and Article XVI, Section 59, Texas Constitution, the **City of Sugar Land, Texas** ("City") a municipal corporation and home-rule city of the State of Texas situated in the County of Fort Bend, acting by and through its governing body, the City Council; and **Fort Bend County Drainage District** ("County"), a political subdivision of the State of Texas (each may be individually referred to as a "Party" and collectively referred to as the "Parties" herein).

RECITALS

WHEREAS, Ditch H is a major outfall drainage channel that begins near the intersection of Highway 90A and State Highway 6 and drains property within the boundaries of LID 2, LID 17, the City, and certain unincorporated areas of Fort Bend County ("Ditch H"); and

WHEREAS, the Parties have individual and collective interests to continue to ensure that drainage capacity is maintained in Ditch H; and

WHEREAS, Ditch H underwent a widening project in 2004 to divert additional water flow and lower the 100-year water surface elevations in Oyster Creek and improve overall drainage along Oyster Creek (the "Project"), as recommended in the October 2002 Upper Oyster Creek and Ditch H Drainage Study prepared by Brown & Gay Engineers, Inc., as updated, the Improvement Plan for LID 2 prepared by Costello, Inc., the LID 2 Engineer, and the March 2004 LID 17 Tract 4 Internal Drainage Analysis prepared by LJA Engineering and Surveying, Inc., the LID 17 Engineer; and

WHEREAS, since the completion of the Project, the Parties have observed continued erosion and sloughing along the banks of Ditch H; and

WHEREAS, the Parties have determined that it would be in their best individual and collective interests to engage an engineer, selected by the mutual agreement of the Parties, to prepare a Preliminary Engineering Report ("PER") to determine the cause of

the erosion and sloughing along the banks of Ditch H and evaluate various options regarding the cost and scope of work necessary to repair Ditch H.

## **AGREEMENT**

NOW THEREFORE, in consideration of mutual promises, covenants, benefits and obligations hereafter set forth, the Parties hereby agree that all recitals are herein incorporated and made a part of this Agreement, and they do contract as follows:

### **Article I**

#### **Approval and Incorporation of Recitals**

**Section 1.01 Recitals.** The recitals set forth above are declared true and correct and are hereby incorporated as part of this Agreement.

### **Article II**

#### **Scope of Agreement**

**Section 2.01. Scope of Agreement.** The Parties agree that this Agreement pertains solely to the contract for engineering services (the "Engineering Contract") related to developing the PER for the Project. Once the PER is received and reviewed by the Parties, the Parties shall determine what further action is needed, which shall be the subject of a separate future agreement, as necessary.

### **Article III**

#### **Administration of Agreement and Engineering Contract**

**Section 3.01. Project Manager.** The Parties hereby designate LID 2 as project manager for purposes of (1) coordinating the collection of amounts owed pursuant to the terms of this Agreement; (2) administering this Agreement; and (3) such other actions as may be reasonably necessary to implement the provisions and purposes of this Agreement. LID 2 agrees to use its best efforts and diligence to complete the Project in accordance with the terms of this Agreement.

**Section 3.02. Scope of Work.** The Scope of Work to be addressed in the Engineering Contract shall be the preparation of the PER to determine the cause of the erosion and sloughing along the banks of Ditch H and evaluate various options regarding the cost and scope of work necessary to repair Ditch H (the "Scope of Work"). Each Party shall provide all information necessary and contribute the appropriate resources to develop the proposed Scope of Work for the PER. Based on the information received, LID 2 shall compile the Scope of Work and circulate the draft Scope of Work to the Parties. LID 2 will not proceed to solicit qualifications for

engineers to carry out the PER until the Parties have unanimously agreed on the proposed Scope of Work.

**Section 3.03. Procedure for Entry Into Engineering Contract.** Once all Parties have unanimously agreed to the proposed Scope of Work, LID 2 shall request qualifications and a detailed cost estimate from engineers to complete the PER in accordance with the approved Scope of Work. Upon receipt of the statements of qualifications, the Parties shall meet to mutually agree upon an engineer to complete the PER. Once all Parties agree upon an engineer, LID 2 shall enter into an Engineering Contract with the approved engineer for the performance of the PER in accordance with the approved Scope of Work.

#### **Article IV** **Cost Allocation**

**Section 4.01. Cost Allocation.** Because each of the parties will benefit from the PER, each Party shall be responsible for an equal one-fourth share of the cost to prepare the PER in accordance with the terms set forth in this Article IV. It is understood by all Parties that this Agreement only extends to the PER and that the cost allocation for the repair of Ditch H will be determined after review of the PER and in accordance with the rules of the Texas Commission on Environmental Quality and by mutual agreement between the Parties.

**Section 4.02. Timing of Deposits.** Prior to LID 2 entering into the Engineering Contract, each Party shall submit to LID 2 one-fourth of the costs indicated on the detailed cost estimate received pursuant to Section 3.03 above. LID 2 shall not be obligated to enter into the Engineering Contract until it has received the full deposits from all Parties.

**Section 4.03. Cost Reconciliation.** In the event that there are funds remaining from the amounts deposited with LID 2 for the costs associated with the PER, LID 2 shall return the pro rata amount to each Party within thirty (30) days of completion of the PER. In the event funds deposited are insufficient for the final cost of the PER, each party shall pay its pro rata share of such additional amount within thirty (30) days of written notification from LID 2.

#### **Article V** **General Provisions**

**Section 5.01 General Cooperation.** The Parties will hold periodic meetings as necessary to discuss the status of the PER and any other matters that the Parties deem necessary to ensure that each is informed of the other's activities and to achieve efficiency and cooperation in the administration of this Agreement.

**Section 5.02 No Liability for General Obligations.** Except as otherwise provided herein, nothing in this Agreement shall have the effect of causing any of the Parties to assume, guarantee, or become in any way liable upon any bond, warrant, indebtedness, or other obligation of the other Parties or to undertake any obligation of the other Parties to their inhabitants.

**Section 5.03 Force Majeure.** If any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, other than the payment of money, then the obligations of such Party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with reasonable diligence. The term "force majeure", as used herein, shall include, but not be limited to acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or any agency, department or branch thereof, or the State of Texas or any agency, department, branch or political subdivision thereof, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, which are not within the control of the Party claiming such inability, and which such Party could not have avoided by the exercise of due diligence and care.

**Section 5.04 No Additional Waiver Implied.** The failure of any Party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by any other Party hereto, but the obligation of such other Party with respect to such future performance shall continue in full force and effect.

**Section 5.05 Modification.** Except as otherwise provided in this Agreement, this Agreement shall be subject to change or modification only with the written mutual consent of all Parties hereto.

**Section 5.06 Parties in Interest.** This Agreement shall be for the sole and exclusive benefit of the Parties and their permitted successors and assigns and shall not be construed to confer any rights upon any third party.

**Section 5.07 Merger.** This Agreement embodies the entire understanding between the Parties with respect to cost sharing for the Project, and there are no prior effective representations, warranties or agreements between or among the Parties with respect to cost sharing for the Project.

**Section 5.08 Construction of Agreement.** This Agreement shall not be construed in favor of or against any Party on the basis that the Party did or did not author this Agreement.

**Section 5.09 Approval or Consent.** Whenever this Agreement requires or permits approval or consent to be hereafter given by any Party, the Parties agree that such approval or consent shall not be unreasonably withheld.

**Section 5.10 Applicable Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas and venue shall be in Fort Bend County, Texas.

**Section 5.11 Joint Representation.** LID 2 and LID 17 (the "Districts") have requested Allen Boone Humphries Robinson LLP ("ABHR") to represent them in connection with the preparation and review of this Agreement. ABHR has discussed with the Districts the advantages and disadvantages of the Districts engaging independent counsel to represent the Districts in connection with the preparation and review of this Agreement because of the potential conflict of interest in ABHR's representation of the Districts in this matter. ABHR has informed the Districts that it reasonably believes that its representation of one District will not be affected by its representation of the other District, and that ABHR is fully able and willing to represent the Districts fairly and adequately in connection with this matter. With a full understanding of the Districts' options to retain independent counsel or to have ABHR represent them with respect to the matters described above, and the advantages and disadvantages of either choice, the Districts requested that ABHR represent the Districts with respect to the matters described above. The Districts understand that there may be complete disclosure to the Districts of all information and communications that ABHR receives from the Districts in the course of ABHR's representation in this matter.

**Section 5.12 Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute one instrument and agreement. A copy of an executed counterpart delivered by telecopy or PDF shall bind the Party executing that counterpart.

**Section 5.13 Notices.** Notices required or permitted to be given by any Party to the other hereunder, including bills, shall be deemed to have been received by the Party or entity to whom they are sent, within five (5) days after their deposit in the United States Mail, properly stamped and addressed. The Parties shall have the right from time to time to change their respective address and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to all other Parties. Notices shall be in writing and shall be mailed to the Parties at the following address:

If to LID 2, to:

Fort Bend County Levee Improvement District No. 2  
c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attn: David M. Oliver, Jr.

If to LID 17, to:

Fort Bend County Levee Improvement District No. 17  
c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attn: Lynne B. Humphries

If to the City, to:

City of Sugar land, Texas  
2700 Town Center Blvd.  
Sugar Land, TX 77479  
Attention: Mr. Chris Steubing

If to the County, to:

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

**Section 5.14 Default.** In the event of default by any Party, any Party may employ attorneys to pursue its legal rights; and the prevailing Party shall be entitled to payment by the other Party(ies) of all reasonable attorneys' fees incurred.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate copies, each of which shall be deemed an original as of the date and year provided in the initial paragraph on page 1.

FORT BEND COUNTY LEVEE IMPROVEMENT  
DISTRICT NO. 17

By: \_\_\_\_\_  
President, Board of Directors

ATTEST:

By: \_\_\_\_\_  
Secretary, Board of Directors

(SEAL)



FORT BEND COUNTY LEVEE IMPROVEMENT  
DISTRICT NO. 2

By: \_\_\_\_\_  
President, Board of Directors

ATTEST:

By: \_\_\_\_\_  
Secretary, Board of Directors

(SEAL)

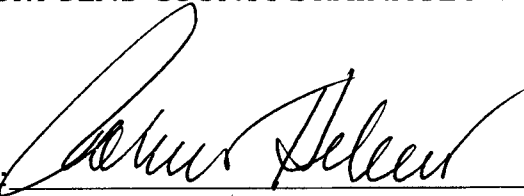
CITY OF SUGARLAND

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FORT BEND COUNTY DRAINAGE DISTRICT

By:  8-27-13  
Name: Robert E. Hebert  
Title: County Judge, Chairman Drainage District

ATTEST:

By:   
Name: Dianne Wilson  
Title: County Clerk

