

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

PROFESSIONAL SERVICES AGREEMENT FOR LOMR

THIS AGREEMENT is made and entered into by and between The Fort Bend County Drainage District, (hereinafter "Drainage District"), a body corporate and politic under the laws of the State of Texas, and Pape-Dawson Engineers, Inc., (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, Drainage District desires that Contractor provide certain professional services for the creation of Letters of Mapping Revisions; and

WHEREAS, Drainage District has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262 of the Texas Local Government Code; and

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

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

AGREEMENT

Article I. Scope of Services

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

Article II. Personnel

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of Drainage District, to perform the Scope of Services when and as required and without delays.

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

Article III. Compensation and Payment

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit

A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is two hundred and forty thousand eight hundred dollars and no/100 (\$240,800.00). In no case shall the amount paid by Drainage District under this Agreement exceed the Maximum Compensation without an approved change order.

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by Drainage District.

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

Article IV. Limit of Appropriation

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that Drainage District shall have available the total maximum sum of two hundred and forty thousand eight hundred dollars and no/100 (\$240,800.00), specifically allocated to fully discharge any and all liabilities Drainage District may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that Drainage District may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed two hundred and forty thousand eight hundred dollars and no/100 (\$240,800.00).

Article V. Time of Performance

The time for performance of the Scope of Services by Contractor shall begin with receipt of the Notice to Proceed from Drainage District and end no later than one (1) year thereafter. Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the Drainage District.

Article VI. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Article VII. Termination

7.1 Termination for Convenience

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

7.2 Termination for Default

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

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

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

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and

obligations of the parties shall be the same as if the termination had been issued for the convenience of the Drainage District in accordance with Section 7.1 above.

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

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

Article VIII. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of Drainage District upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to Drainage District on request. Change or alteration of any such data and material by Drainage District or by others acting through or on behalf of Drainage District will be at Drainage District's sole risk.

Article IX. Inspection of Books and Records

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

Article X. Insurance

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

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.2 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

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

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

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

Article XI. Indemnity

CONTRACTOR SHALL INDEMNIFY AND DEFEND DRAINAGE DISTRICT AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

(This space left intentionally blank.)

Article XII. Confidential and Proprietary Information

12.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to Drainage District. Any and all information of any form obtained by Contractor or its employees or agents from Drainage District in the performance of this Agreement shall be deemed to be confidential information of Drainage District ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

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

12.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to Drainage District that is inadequately compensable in damages. Accordingly, Drainage District may seek and obtain injunctive relief against the breach or threatened breach of the

foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of Drainage District and are reasonable in scope and content.

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

12.5 Contractor expressly acknowledges that Drainage District is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, Drainage District will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to Drainage District by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Article XIII. Independent Contractor

13.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

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

Article XIV. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

Drainage District: Fort Bend County Drainage District
P.O. Box 1028
Rosenberg, Texas
77471

With a copy to: Fort Bend County
Attn: County Judge
301 Jackson Street, Suite 719
Richmond, Texas 77469

Contractor: Pape-Dawson Engineers, Inc.
Attn: Robert "Michael" Preiss, P.E.
10333 Richmond Avenue, Suite 900
Houston, Texas 77042

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Article XV. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by Drainage District, Contractor shall furnish Drainage District with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Article XVI. Performance Warranty

16.1 Contractor warrants to Drainage District that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

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

Article XVII. Assignment and Delegation

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Article XVIII. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the Drainage District's sovereign immunity.

Article XIX. Successors and Assigns

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

Article XX. Third Party Beneficiaries

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

Article XXI. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Article XXII. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies

shall be the sole responsibility of Drainage District. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of Drainage District, except where required to do so by law.

Article XXIII. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

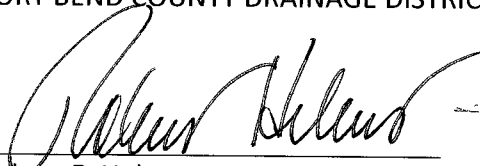
Article XXIV. Conflict

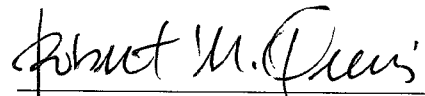
In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 9 day of June, 2015.

FORT BEND COUNTY DRAINAGE DISTRICT

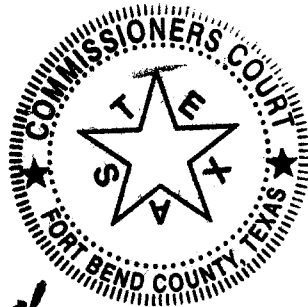
PAPE DAWSON ENGINEERS, INC.


Robert E. Hebert,
County Judge


Authorized Agent- Signature

ROBERT M. PRESS
Authorized Agent- Printed Name

ATTEST:



VICE PRESIDENT
Title


Laura Richard, County Clerk

5.21.15
Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$240,800 to accomplish and pay the obligation of the Fort Bend County Drainage District under this contract.


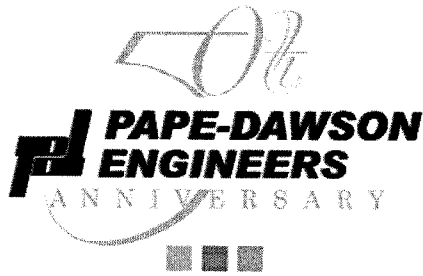

Robert Edward Sturdivant, County Auditor

EXHIBIT A



May 20, 2015
Revised May 20, 2015

Mr. Mark Vogler, PE
Fort Bend County Drainage District
1124 Blume Road
Rosenberg, TX 77471

Re: Fort Bend County FIRM Mapping Corrections

Dear Mr. Vogler:

We are pleased to present this proposal for providing civil engineering services in connection with the above referenced project. Our proposed scope of service and associated fee is as follows:

- I. DATA COLLECTION \$6,800**
This task involves the collection of FEMA effective models, mapping, and any LOMR that post-dates the 2008 LiDAR. Parcel data will also be collected for use on preparing property owner notification letters to those affected by the mapping changes.
- II. FLOODPLAIN ANALYSIS AND MAPPING \$59,000**
This task will be devoted to the creation of the revised floodplains using GIS shapefiles for each individual case. All necessary shapefiles will be created, formatted, and populated based on FEMA's mapping standards and included within each LOMR submittal.
- This task includes the creation of the necessary Topographic Workmap and Annotated FIRM exhibits for LOMR submittals,
- III. DOCUMENTATION \$62,000**
Each mapping change will be submitted individually and corresponding reports will be prepared for each one. Documentation of the changes will be discussed and clarified within the reports for each submittal.

This task also includes the completion of MT-2 forms, and required property owner notifications to those affected by the mapping change.

IV. MEETINGS/COORDINATION/FEMA RESPONSE \$18,000

It is estimated that no more than a total of three (3) meetings with FBDD will be necessary during the course of the project. This task includes coordination with FBDD on progress as well as FEMA during the course of the Federal review. Task also includes time for responding to any FEMA comments received.

V. FEMA Review Fees and Other Direct Expenses \$95,000

While we anticipate the LOMRs will be considered fee exempt by FEMA as they are corrections to mapping errors, FEMA may potentially charge \$8,250 per LOMR submittal or \$8,250 + \$2,500 per FIRM panel if a PMR is required. Additionally, newspaper notifications may be required for each LOMR submittal at an approximate cost of \$1,200 each.

Direct Expenses shall include reproduction, travel, long distance telephone calls, express mail, special deliveries, newspaper notifications, FEMA review fees and subcontractor expenses directly related to these services. Direct Expenses shall include a 10% markup on cost.

SCHEDULE

A total of six (7) LOMRs are planned within this proposal and are listed in the following table as discussed in the meeting on March 17th and subsequent May 4th and May 14th request.

- (1) Flat Bank Creek
- (2) Brazos River near McCrary Road
- (3) Dry Creek near Louise Street
- (4) Oyster Creek and Stafford Run Creek
- (5) Seabourne Creek near US 59
- (6) Clear Creek near FM 2234
- (7) Keegans Bayou
- (8) Willow Fork above Cinco Ranch Blvd
- (9) Gapps Bayou

It is anticipated that once notice to proceed is given a draft of the first LOMR submittal will be submitted to FBDD within 4 weeks for review and comment. The final LOMR will be provided to the FBDD within 2 weeks after their review has been completed and will be submitted to FEMA following signatures from respective local floodplain administrators. Subsequent LOMRs will be completed in order, unless otherwise directed by FBDD.

SUMMARY

I.	DATA COLLECTION	\$6,800
II.	FLOODPLAIN ANALYSIS AND MAPPING	\$59,000
III.	DOCUMENTATION	\$62,000
IV.	MEETINGS & COORDINATION	\$18,000
V.	FEMA REVIEW FEES AND OTHER EXPENSES	<u>\$95,000</u>
	TOTAL:	\$240,800

COMPENSATION

Basis of Compensation

Pape-Dawson's compensation for the above services will be a charge for personnel services. A budget of **\$145,800** is the estimated cost of Pape-Dawson's current understanding of the services identified above. This budget figure includes \$95,000 for Direct Expenses, applicable sales tax on services and FEMA review fees (if any). This budget figure will not be exceeded without written modification of this Agreement.


Agreement

Upon Client's signing of this Proposal, this Proposal and the attached Terms and Conditions become the Agreement between the Client and Pape-Dawson.

We appreciate the opportunity to work with you on this project. If you agree with our proposed scope of services, please acknowledge your approval by signing in the space provided below and returning this letter to our office. Receipt of the executed document will serve as your authorization for us to proceed with the work. If you have any questions or need additional information, please do not hesitate to contact me at your earliest convenience.

Sincerely,

Pape-Dawson Engineers, Inc.
Texas Board of Professional Engineers, Firm Registration # 470



Lonnie Anderson, P.E.
Sr. Project Engineer

Fort Bend County Drainage District

Signature: _____
Name: _____
Title: _____
Date: _____

Attachment

O:\MARKETING\PROPOSALS\LETTERS\2015\1504\150414A9H R1.docx (15-01093)



**PAPE-DAWSON ENGINEERS, INC.
PROFESSIONAL SERVICES AGREEMENT
RE: FORT BEND COUNTY FIRM MAPPING CORRECTIONS**

WHEREAS: This Professional Services Agreement is made and entered into between **FORT BEND COUNTY DRAINAGE DISTRICT**, hereinafter referred to as "Client" and PAPE-DAWSON ENGINEERS, INC., a Texas corporation, 2000 NW Loop 410, San Antonio, Texas, 78213-2251, hereinafter referred to as "Engineer". This Agreement consists of two parts, Part I - Terms and Conditions, Part II - Work Order/Proposal - Scope of Services and Compensation.

ARTICLE 1: SERVICES

Engineer agrees to perform Professional Services in conformance with the descriptions, definitions, terms and conditions as set forth herein and on Work Order(s) and/or Proposal, and Amendment(s), subsequently attached hereto.

ARTICLE 2: WORK ORDERS AND PROPOSALS

2.1 Properly executed individual and consecutively numbered Work Order(s) and/or Proposal shall be attached and are hereby made a part of this Agreement.

2.2 The Work Order(s) and/or Proposal shall identify the specific Scope of Services to be performed and the amount and type of compensation for the specific services.

2.3 Client shall authorize and Engineer shall commence work upon Engineer's receipt of the properly executed and signed Work Order(s) and/or Proposal.

ARTICLE 3: CHANGES

3.1 The Client may at any time, by written Amendment, make changes within the general scope of individual Work Order(s) or Proposal relating to services to be performed. If such changes cause an increase or decrease in the Engineer's cost of, or time required for, performance of any services, an equitable adjustment shall be made and reflected in a properly executed Amendment.

3.2 The Engineer is not obligated to begin work on a change of scope or deliver that work product until a properly executed Work Order/Proposal amendment is signed by the Client.

3.3 In the event that there are modifications and/or additions to regulatory requirements relating to the services to be performed under this Agreement after the date of execution of this Agreement, the increased or decreased cost of performance of the services provided for in this Agreement and subsequent Work Orders/Proposal shall be reflected in an appropriate Work Order/Proposal Amendment.

ARTICLE 4: THE TERM

4.1 **Term.** Engineer shall be retained by Client as of the date Client executes the attached Work Order and/or Proposal, which together with these Terms and Conditions constitutes the Agreement, and continuing until the Services have been fully performed or until the Engineer's Services are terminated under provisions of the Agreement.

ARTICLE 5: DUTIES

5.1 **Access.** Client will provide Engineer with access to the Property or to any other site as required by Engineer for performance of the Services.

5.2 **Client-furnished Data.** Client shall provide all criteria and full information as to Client's requirements for the Project; designate a person to act with authority on Client's behalf in respect to all aspects of the Project, examine and respond promptly to Engineer's submissions, and give prompt written notice to Engineer whenever he observes or otherwise becomes aware of any defect in the work.

Client shall also do the following and pay all costs incident thereto: Furnish to Engineer core borings, probings and subsurface exploration, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements, and any other information previously made available to the Client, which may be required by Engineer, all of which Engineer may rely upon in performing its services.

Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of constructor(s)' applications for payment, and any inspection services to determine if constructor(s) are performing the work legally.

5.3 **Other Information.** Engineer will rely upon commonly used sources of data, including database searches and agency contacts. Engineer does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.

5.4 **Indemnity.** The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless for damages and losses arising from the negligent acts, errors or omissions of the Engineer in the performance of the professional services under this Agreement, to the extent that the Engineer is responsible for such damages and losses on a comparative basis of fault and responsibility between the Engineer and the Client. The Engineer is not obligated to indemnify the Client for the Client's own negligence.

5.5 **Ownership of Documents.** All designs, drawings, specifications, documents, and other work products of the Engineer, whether in hard copy or in electronic form, are instruments of service for the Services, whether Services are completed or not. Reuse, change or alteration by the Client or by others acting through or on behalf of the Client of any such instruments or service without the written permission of the Engineer will be at the Client's sole risk. Client agrees to indemnify the Engineer, its officers, partners, employees, and subcontractors from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees, arising out of or related to such unauthorized reuse, change or alteration.

5.6 **Reporting Obligations.** Client has responsibility for complying with all legal reporting obligations. Nothing in the Agreement precludes Engineer from providing any notices or reports that it may be required by law to give to governmental entities.

5.7 **Laboratory Services.** In performing environmental services, Engineer may make use of an independent testing laboratory. Engineer will not, and Client shall not rely upon

Engineer to, check the quality or accuracy of the testing laboratory's services.

5.8 **Changed Conditions.** The Client shall rely on the Engineer's judgment as to the continued adequacy of the Agreement in light of occurrences or discoveries that were not originally contemplated by or known to the Engineer. Should Engineer call for contract renegotiation, the Engineer shall identify the changed conditions necessitating renegotiation and the Engineer and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

5.9 **Opinions of Cost.** Should Engineer provide any cost opinions, it is understood that those opinions are based on the experience and judgment of Engineer and are merely opinions. Engineer does not warrant that actual costs will not vary from those opinions because, among other things, Engineer has no control over market conditions.

5.10 **Construction Observation.** If construction phase services are included in the basic services, the Engineer shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The Client has not retained the Engineer to make detailed inspections or to provide exhaustive or continuous project review and observation services. The Engineer does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the project. Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s).

ARTICLE 6: COMPENSATION OF SERVICES

6.1 **Compensation of Services.** Engineer's compensation for services shall be set forth in individual Work Orders or as identified in Proposal.

Compensation. Client agrees to pay Engineer for Professional Services in accordance with the descriptions, definitions, terms and conditions as set forth herein and in Work Order(s) and/or Proposal, and Amendments subsequently attached hereto. Expenses directly related to these services, including reproduction, travel, long distance telephone bill, express mail, special deliveries and subcontractor expenses shall include a 10% markup on cost.

Payments. Engineer will invoice Client monthly in accordance with the terms and conditions of the Work Order and/or Proposal, and Work Order Amendment for Services and reimbursables. Client agrees to promptly pay Engineer at his office at 2000 NW Loop 410, San Antonio, Texas 78213, the full amount of each such invoice upon receipt. In no event shall Engineer's failure to bill monthly constitute default under the terms and conditions of this Agreement.

6.2 **Sales and Use Tax.** Effective July 1, 1990, a State, City and MTA Sales Tax must be collected on Surveying Fees for the establishment of Real Property Boundaries and determining the location of structures or improvements in relation to the boundaries. Charges for prints and reproductions are also subject to a Sales Tax. Client agrees to pay Engineer the applicable Sales Tax on services and said tax is not considered a part of Engineer's compensation for services. In the event subsequent taxes are levied by Federal, State or Local authorities, relating to the services in writing and such modifications as are required shall be made a part of this Agreement.

6.3 **Right to Stop Performance.** If Client does not pay any amount due to Engineer within thirty (30) days after the invoice date, Engineer may, upon three (3) additional days' verbal or written notice to Client, stop performance of the Services until payment of the amount owed has been received.

6.4 **Interest.** Payments due and unpaid to Engineer under the Agreement shall bear interest at the rate of twelve percent (12%) per annum, or lesser if required by law, calculated from the date of the invoice, if the payment is not made within thirty (30) days of the date of the invoice.

6.5 **Attorney's Fees:** In the event Engineers' invoices for services are given to an attorney for collection, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding, then Client shall pay Engineer all costs of collection, including the maximum attorney's fees allowed by Law and court costs, in addition to other amounts due.

ARTICLE 7: TERMINATION OF SERVICES

7.1 **Termination.** This Agreement and/or Work Order(s) may be terminated without cause at any time prior to completion of Engineer's services, either by Client or by Engineer, upon written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue work, the Engineer shall discontinue work under this Agreement and/or Work Order immediately. In the event Client terminates the Agreement and/or Work Order based on Client's reasonable opinion the Engineer has failed or refused to prosecute the work efficiently, promptly or with diligence, the Engineer shall have ten (10) days, from the receipt of written notification by Client, to cure such failure to perform in accordance with the terms of this Agreement and/or Work Order(s).

7.2 **Compensation in Event of Termination.** On termination, by either Client or Engineer, Client shall pay Engineer with respect to all contracted services rendered and expenses incurred before termination an amount fixed by applying the Engineer's Standard Hourly Rates, in force at the time of termination, to all services performed to date, in addition to termination settlement costs the Engineer reasonably incurs relating to commitments which had become firm before the termination.

ARTICLE 8: RELATIONSHIP OF PARTIES

8.1 **Independent Contractor:** It is understood that the relationship of Engineer to Client shall be that of an independent contractor. Neither Engineer nor employees of Engineer shall be deemed to be employees of Client.

ARTICLE 9. LIMITATION OF LIABILITY

9.1 **Limitation of Liability.** To the fullest extent permitted by law, the total liability of Engineer and its subconsultants and subcontractors to Client for any and all injuries, claims, losses, expenses, or damages whatsoever from any cause or causes, including, but not limited to, strict liability, breach of contract, breach of warranty, negligence, or errors or omissions (collectively "Claims") shall not exceed the Engineer's total fee. In no event will Engineer, its subconsultants or subcontractors be liable for punitive, special, incidental, or consequential damages.

9.2 **No Certification.** Engineer shall not be required to sign any documents, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain. The Client also agrees not to make resolution of any dispute with Engineer or

payments of any amount due to Engineer in any way contingent upon Engineer's signing any such certification.

9.3 **Execution of Documents.** The Engineer shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgment of the Engineer, increase the Engineer's risk or the availability or cost of its professional or general liability insurance.

ARTICLE 10: MISCELLANEOUS

10.1 **Entire Agreement.** The Agreement (including any exhibits) contains the entire agreement between Engineer and Client, and no oral statements or prior written matter shall be of any force or effect. The Agreement may be modified only by a written document executed by both parties.

10.2 **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10.3 **Venue.** Venue of any action under the Agreement shall be exclusively in Bexar County, Texas.

10.4 **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.5 **Construction of Agreement.** The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement or any amendments or exhibits.

10.6 **Successor and Assigns: Third Party Beneficiary.** The Agreement shall be binding upon Engineer, Client and their respective legal representatives, successors and permitted assigns. Neither Engineer nor Client may assign the Agreement nor any right or obligation under it without the prior written consent of the other party. Nothing in the Agreement restricts Engineer's ability to hire subcontractors in connection with the Services. The Services and any report prepared under this Agreement are for the sole benefit and sole use of Client and are not for the use of any other person. Only Client may rely upon the Agreement and the Services, unless Engineer gives Client prior and specific written approval.

10.7 **Dispute Resolution.** Any claim, dispute or other matter in question arising out of or related to the Agreement of the Services provided thereunder shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation. Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration

Association currently in effect. The demand for arbitration shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association. No arbitration arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement. The foregoing agreement to arbitration shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

10.8 **Mediation:** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or other legal proceedings.

Each party agrees to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their respective subcontractors, suppliers, and subconsultants, thereby providing for mediation as the initial method for dispute resolution between the parties to all those agreements.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.9 **No Warranty.** Engineer makes no warranty, either expressed or implied, as to Engineer's findings, recommendations, plans, specifications, or professional advice. Engineer has endeavored to perform its services in accordance with generally accepted standards of practice by recognized professional firms in performing services of a similar nature in the same locality, under similar circumstances. Client recognizes that neither Engineer nor any of Engineer's subconsultants or subcontractors owes any fiduciary responsibility to Client.

10.10 **Survival of Provisions.** Termination of the Services for any reason whatsoever shall not affect (a) any right or obligation of any party that is accrued or vested prior to such termination, and any provision of the Agreement relating to any such right or obligation shall be deemed to survive the termination of the Services or (b) any continuing obligation, liability or responsibility of Engineer and of Client which would otherwise survive termination of the Services.

10.11 Complaints regarding surveying may be filed with the Texas Board of Professional Land Surveying, Building A, Suite 156, 12100 Park 35 Circle, Austin, TX 78753.

10.12 **Invalidation.** If the attached Proposal is not executed by Client within thirty (30) days of the date signed by Engineer, it shall become invalid.

Engineer: **PAPE-DAWSON ENGINEERS, INC.**

By: 

Name: Robert "Michael" Preiss, P.E.

Title: Vice President - Houston Date: 5/20/2015

Client: **FORT BEND COUNTY DRAINAGE DISTRICT**

By: _____

Name: _____

Title: _____ Date: _____