

Region 2 Lower Red-Sulphur-Cypress Regional Flood Planning Group

May 6, 2021

2:00 pm

Via teleconference/webinar

Use the following information to register for the meeting:

<https://zoom.us/meeting/register/tJcudeihqjlvGNJnwu-4m15T9ztfMqgmMOqL>

After registering, you will receive a confirmation email containing information about joining the meeting.

If you experience issues while registering or do not have access to a computer, please contact Paul Prange no less than two (2) workdays prior to the meeting at 903.255.3519 or pprange@atcog.org.

Agenda:

1. Call to Order
2. Welcome
3. Confirmation of attendees / determination of quorum
4. Public comments – limit 3 minutes per person

Action Items

5. Consider approval of minutes for the meeting held Thursday, April 1, 2021.
6. Discuss and Consider action on Professional Services Contract between Halff Associates and the Ark-Tex Council of Governments to perform Technical Consulting Services necessary to develop the 2023 Regional Flood Plan

Presentations

7. Pre-Planning Public Input – Texas Water Development Board:
 - a. The RFPG is soliciting public input regarding suggestions and recommendations as to issues, provisions, projects, and strategies that should be considered during the flood planning cycle and/or input on the development of the regional flood plan (as required per Texas Water Code §16.062(d) and 31 Texas Administrative Code §361.12(a)(4))

Workshop

8. Halff Associates led workshop:
 - a. Flood Planning Overview
 - i. Review and discuss the flood planning process
 - ii. Draft Schedule overview
 - iii. Importance of public and community involvement
 - iv. Roles of the RFPG and Halff.

- b. Stakeholder engagement
 - i. Present current engagement plan
 - ii. Identify key stakeholders
 - iii. Discuss ways to generate public interest and receive input
- c. Data collection
 - i. Present the upcoming online community and public surveys
 - ii. Discuss known data sources
- d. Establish Region 2 schedule

Other Business

- 9. Update from Planning Group Sponsor
- 10. Consider date and agenda items for next meeting
- 11. Adjourn

If you wish to provide written comments prior to or after the meeting, please email your comments to pprange@atcog.org and include "Region 2 RFPG Meeting" in the subject line of the email – OR – you may mail your comments to Region 2 RFPG, c/o ATCOG – Paul Prange, 4808 Elizabeth St, Texarkana, TX 75503.

If you wish to provide oral public comments at the meeting, please submit a request via email to pprange@atcog.org, include "Region 2 RFPG Meeting Public Comment Request" at least 2 hours prior to the meeting, and follow the registration instructions at top of page 1 of the Agenda.

Additional information may be obtained from: www.texasfloodregion2.org, or by contacting Paul Prange at pprange@atcog.org, 903-832-8636, -or- Region 2 RFPG, c/o ATCOG, 4808 Elizabeth St, Texarkana, TX 75503

All meeting agendas and notices will be posted on our website at www.texasfloodregion2.org. If you wish to be notified electronically of RFPG activities, please submit a request to pprange@atcog.org, include "Request for notification of Region 2 RFPG activities". This request will be honored via email only unless reasonable accommodations are needed.

Meeting Minutes
Region 2 Lower Red-Sulphur-Cypress Flood Planning Group Meeting
April 1, 2021
2:00 p.m.
Franklin County Sheriff's Office
208 TX Hwy 37, Mt. Vernon, TX, 75457
and
Zoom Webinar/Teleconference

Roll Call:

<u>Voting Member</u>	<u>Interest Category</u>	<u>Present (x) / Absent () / Alternate Present (*)</u>
Preston Ingram (William)	Agricultural interests	X
Andy Endsley	Counties	X
W. Greg Carter	Electric generating utilities	X
Laura-Ashley Overdyke	Environmental interests	X
Clark Crandall	Industries	X
Dustin Henslee	Municipalities	X
Kirby Hollingsworth	Public	X
R. Reeves Hayter	River authorities	X
Kelly Mitchell	Small business	X
Joseph W. Weir III	Water districts	X
Susan Whitfield	Water utilities	X

<u>Non-voting Member</u>	<u>Agency</u>	<u>Present(x)/Absent()/ Alternate Present (*)</u>
James (Clay) Shipes	Texas Parks and Wildlife Department	
Brian Hurtuk	Texas Division of Emergency Management	X
Darrell Dean	Texas Department of Agriculture	X
Tony Resendez	Texas State Soil and Water Conservation Board	
Trey Bahm	General Land Office	X
Anita Machiavello	Texas Water Development Board (TWDB)	X
Michelle Havelka	Texas Commission on Environmental Quality	X
Darlene Prochaska	USACE, Fort Worth District	x
Randy Whiteman	RFPG 1 Liaison	x

Quorum:

Quorum: **Yes**

Number of voting members or alternates representing voting members present: **11**

Number required for quorum per current voting membership of **11: 6**

Other Meeting Attendees: **

Chris Brown - ATCOG
Paul Prange - ATCOG
Jarred Overbey – Halff Associates Team
Joshua McClure – Halff Associates Team
David Rivera – Halff Associates Team
Jim Keith – Halff Associates Team
Kayla Wood – Halff Associates Team
Stephanie Griffin – Halff Associates Team
Scott Hubley – Halff Associates Team
Lindsey Hutson – Halff Associates Team
Melissa Beasley – Halff Associates Team
Matt Bucchin – Halff Associates Team
Jena Hanson – Halff Associates Team
Heather Harris – Carollo Engineers Team
Tony Smith – Carollo Engineers Team
Stan Hayes – Carollo Engineers Team
Barney Austin – Carollo Engineering Team
Andrew Smith – Carollo Engineers Team
Walt Sears – NETMWD
Hector Rivera
Robert Johnson
Dustin Meyer – PRPC
Vince DeCapio
Morgan White – TWDB
Matt Nelson – TWDB
James Bronikowski – TWDB
Hayley Gillespie - TWDB

**Meeting attendee names were gathered from those who entered information for joining the Zoom meeting.

All meeting materials are available for the public at:

<http://www.twdb.texas.gov/flood/planning/regions/schedule.asp>.

AGENDA ITEM NO. 1: Call to Order

Reeves Hayter called the meeting to order at 2:12p.m. A roll call of the planning group members was taken to record attendance and a quorum was established prior to calling the meeting to order.

AGENDA ITEM NO. 2: Welcome

Reeves Hayter welcomed members to the meeting and Chris Brown asked ATCOG staff member, Paul Prange to conduct a roll call of attendees.

AGENDA ITEM NO. 3: Confirmation of Attendees / determination of a quorum

Each present voting and non-voting member of the Region 2 Lower Red-Sulphur-Cypress RFPG introduced themselves, establishing that a quorum had been met. All voting members were present and only two non-voting members were absent.

AGENDA ITEM NO. 4: Public Comments – limit 3 minutes per person

Reeves Hayter opened the floor to public comments. No public comments were given.

AGENDA ITEM NO. 5: TWDB Update:**a. Pre-Planning Meeting Presentation and Discussion p.3)**

Anita Machiavello announced that the contract between the TWDB and ATCOG has been approved for the Region 2 Lower Red-Sulphur-Cypress RFPG and coordination is ongoing regarding the sub-contract between ATCOG and the technical consultant. Anita stated that two pre-planning meetings are required by each flood planning group and she conducted a slide presentation for the RFPG 2 board members, highlighting the public meeting requirements. Anita presented information relating to the pre-planning meeting background and regional flood planning, including the flood planning timeline. Anita also discussed the key tasks of the Regional Flood Planning Groups and presented information relating to flood mitigation practices. Finally, Anita stressed the importance of public input in the flood planning process and stated that there will be many opportunities for public input throughout the development of the regional flood plan. Reeves Hayter stated that the board asked Anita to conduct this presentation at the previous Region 2 Lower Red-Sulphur-Cypress RFPG meeting.

ACTION ITEMS**AGENDA ITEM NO. 6: Approval of minutes from the previous meeting held on Thursday, March 4, 2021 (p.11)**

Reeves Hayter opened the floor for discussion and approval of the minutes from the previous meeting. No discussion took place among the board members. A motion was made by Joseph Weir and was seconded by Clark Crandall to approve the minutes as presented. The motion carried unanimously.

AGENDA ITEM NO. 7: Presentations and Discussion of submitted proposals in response to the Request for Qualifications (RFQ) for Technical Services for the 2023 Regional Flood Plan.

Reeves Hayter announced that the Ark-Tex Council of Governments (ATCOG) and the Region 2 Lower Red-Sulphur-Cypress Regional Flood Planning Group solicited proposals from technical consultants, in accordance with the Texas Water Development Board (TWDB) guidelines and received two proposals from interested parties. Mr. Hayter stated that both consultants were highly qualified and capable of

performing the tasks required to develop a regional flood plan. Mr. Hayter then announced that Halff Associates and Carollo Engineers would each be allowed to conduct a presentation to the board members prior to scoring the proposals and selecting a technical consultant.

a) Halff Associates

Project Manager, Joshua McClure, introduced himself and the consulting team consisting of representatives from Halff Associates, Freese and Nichols, MTG Engineers and Surveyors and H2O Partners. Each team member provided detailed information regarding their approach for developing a regional flood plan. During this presentation much discussion took place between the RFPG 2 board members and the Halff Associates team members. Once the presentation was concluded, the consulting team was asked to step out of the room for further discussion and consideration by the RFPG 2 board members.

b) Carollo Engineers

Project Manager, Heather Harris, introduced herself and the consulting team consisting of Carollo Engineers, Hayes Engineering, Black & Veatch and Aqua Strategies. Each team member provided detailed information regarding their approach for developing a regional flood plan. During this presentation much discussion took place between the RFPG 2 board members and the Carollo Engineering team members. Once the presentation was concluded, the consulting team was asked to step out of the room for further discussion and consideration by the RFPG 2 board members.

AGENDA ITEM NO. 8: Discuss and Consider action on selection of firm to perform Technical Consulting Services for the 2023 Regional Flood Plan.

Reeves Hayter opened the floor for discussion and consideration of action in selecting a technical consultant. Discussion commenced among the RFPG 2 board members prior to submitting the score sheets for tabulation. Each RFPG 2 board member submitted their score sheets to Chris Brown for tabulation. The results indicated that Halff Associates received 887 total points and Carollo Engineering received 860 total points. A consensus was reached by the RFPG 2 board members to take action on selecting a technical consultant for the development of the regional flood plan. The Region 2 Lower Red-Sulphur-Cypress Regional Flood Planning Group agreed to select Halff Associates as the technical consultant to develop the 2023 Regional Flood Plan during the first planning cycle and authorized ATCOG to enter into negotiations with Halff Associates to develop a contract for services, in accordance with TWDB guidelines. Mr. Hayter opened the floor for a motion to approve Halff Associates as the technical consultant. Andy Endsley made a motion and Greg Carter seconded the motion. The motion carried unanimously. Reeves Hayter invited both technical consulting teams back into the room and thanked each of them for their interest in the region 2 flood planning process and for their presentations. The results were then announced to both technical consulting teams.

OTHER BUSINESS

AGENDA ITEM NO. 9: Update from Planning Group Sponsor

Reeves Hayter turned the floor over to Chris Brown for updates.

a) ATCOG/TWDB Group Sponsor Contract

Chris Brown stated that ATCOG has signed the contract from the TWDB to administer the Region 2 Lower Red-Sulphur-Cypress Regional Flood Planning Group and expects that the contract will be executed within approximately two weeks.

b) Contact with Army Corps of Engineers for appointment to new, non-voting member positions

Chris Brown stated that he had contacted the Tulsa and Fort Worth Districts requesting participation with the development of the Region 2 Flood Plan, and that each district has appointed a representative to serve as a non-voting member on the Region 2 Flood Planning Group. Mr. Brown introduced Darlene Prochaska from the Fort Worth District and announced that Travis Wilsey from the Tulsa District, was unable to attend today's meeting, due to a prior commitment.

AGENDA ITEM NO. 10: Consider date and agenda items for next meeting

Reeves Hayter opened the floor for discussion. The Region 2 RFPG board members agreed to conduct the next meeting on Thursday, May 6, 2021 at 2:00p.m. via webinar/teleconference.

AGENDA ITEM NO. 11: Adjourn

Reeves Hayter opened the floor for a motion to adjourn the meeting.

Greg Carter made a motion to adjourn.

Kirby Hollingsworth seconded the motion to adjourn.

The board members unanimously agreed.

The vote to adjourn was passed by unanimous consent.

The meeting was adjourned at 5:31p.m. by Reeves Hayter

Approved by the Region 2 Lower Red-Sulphur-Cypress RFPG at a meeting held on 3/4/2021.

Reeves Hayter, CHAIR

BRIEFING PAPER - ACTION ITEM

ITEM 6:

Discuss and Consider action on Professional Services Contract between Halff Associates and the Ark-Tex Council of Governments to perform Technical Consulting Services necessary to develop the 2023 Regional Flood Plan

DISCUSSION:

Attached is the draft contract between Halff Associates, INC and ATCOG.

We have incorporated the required TWDB language. To this we will attach the following:

- Exhibit A
 - TWDB Scope with a note indicating which portion that ATCOG is handling
 - TWDB budget (minus the ATCOG portion) with columns added showing how much each of our subs will get
- Exhibit B
 - TWDB Schedule

The above exhibits should be completed in the next few days and available for the meeting.

The TWDB has published the following guidance and additional information below:

[TWDB Subcontracting Guidelines](#)

Congratulations to you and your RFPGs for selecting and/or are preparing to select technical consultant(s) to support the development of your first-ever regional flood plans. As you know, the Planning Group Sponsor is responsible for executing a subcontract with the technical consultant(s) selected by the RFPG.

Below please find information regarding important next steps for your organizations:

- 1. Submit the signed, executed subcontract between the Planning Group Sponsor and the technical consultant(s) to contracts@twdb.texas.gov for TWDB review, using a descriptive title that includes the contract number, such as "Region X, Contract Number XXXXXXXXXXXX, Subcontract for Review." Copy your TWDB assigned Planner on this email.*
- 2. Complete, sign, and return a pdf of the Exhibit F Certification of Procurement of Professional Services form (template attached) to contracts@twdb.texas.gov, using a*

descriptive title that includes the contract number, such as “Region X, Contract Number XXXXXXXXXXXX, Completed Exhibit F.” Copy your TWDB assigned Planner on this email.

3. *Attend the TWDB’s Contract Kick-Off Meeting with RFPG Sponsors on April 21, 2021 from 9:00 am to 10:30 am via GoToWebinar. We will soon send a calendar invite with a meeting agenda and instructions for joining the meeting.*

Please keep in mind that drafting and legal review of the subcontract is solely the responsibility of the Planning Group Sponsor. You may reference the TWDB Subcontracting Guidelines document for details regarding which items TWDB will check for consistency. We are working to officially update the guidelines on our website, but in the meantime, the clauses regarding Regional Water Planning “Ownership” and “Compliance with Rules and Statutes” are also applicable to regional flood planning contracts and the applicable language can be found in Article VI, (L.) and (M.) of your contract with the TWDB. Lastly, please know that you must obtain TWDB approval of the subcontract (see item 1 above) before submitting any payment requests associated with such subcontracts. TWDB’s review is limited and is solely to ensure that the subcontract is consistent with the terms and requirements included in the primary contract between the TWDB and Planning Group Sponsor.

Thank you for your past and continued efforts to make the first cycle of regional flood planning in Texas successful. Please reach out to me or your TWDB assigned Planner if you have any questions or concerns.

RECOMMENDATION:

Staff recommends review and recommendation of final contract draft approval to the ATCOG Board.

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES ON A DEFINED SCOPE OF SERVICES BASIS

This Agreement for Professional Engineering Services, hereinafter called "Agreement," is entered into by the Ark-Tex Council of Governments a political subdivision of the State of Texas, hereinafter referred to as "Client", duly authorized to act by the Regional Flood Planning District of said Client, and HALFF ASSOCIATES, INC., a Texas corporation, acting through a duly authorized officer, herein called "Engineer," relative to Engineer providing professional engineering services to the Client. Client and Engineer when mentioned collectively shall be referred to as the "Parties".

W I T N E S S E T H:

For the mutual promises and benefits herein described, the Client and Engineer agree as follows:

I. Term of Agreement.

A. Term of Agreement. This Agreement shall become effective on May ____, 2021 and expires on June 30, 2023.

B. Agreement Initiation Date This agreement was initiated on April 2, 2021, the day after selection by the Regional Flood Planning Group on April 1, 2021.

II. Services to be Performed by Engineer. Engineer shall provide to the Client basic engineering services as described in the scope of services attachment and fully incorporated herein as "**Exhibit A**" which services may include, but will not be limited to, those services normally rendered by an engineer to a political subdivision. Engineer shall perform its obligations under this agreement as an independent contractor and not as an agent or fiduciary of any other party.

III. Compensation. The maximum fee for this Agreement is **\$834,400.00**. Client agrees to pay monthly invoices or their undisputed portions within 60 days of receipt. Payment later than 60 days shall include interest at 1 percent (1%) per month or lesser maximum enforceable interest rate, from the date the Client received the invoice until the date Engineer receives payment. Such interest is due and payable when the overdue payment is made. With the exception of, a five (5%) percent retainage that will be withheld until Client submits a Regional Flood Plan to the TWDB and payment is approved and paid.

Time-related charges will be billed as specified in this Agreement. Unless stated otherwise in this Agreement, direct expenses, subcontracted services and direct costs will be billed at actual cost. Mileage will be billed at current IRS rates.

The first day that work performed under this AGREEMENT is eligible for reimbursement will be the AGREEMENT INITIATION DATE for work and expenses associated with Exhibit A, Scope of Work.

IV. Client's Obligations. The Client agrees that it will (i) designate a specific person to act as the Client's representative, (ii) provide Engineer with any previous studies, reports, data, budget constraints, special Client requirements, or other pertinent information known to the Client, when necessitated by a project, (iii) Client agrees to provide site access, and to provide those services described in the attached Scope of Services assist Engineer in obtaining access to property necessary for performance of Engineer's work for the Client, (iv) make prompt payments in response to Engineer's statements and (v) respond in a timely fashion to requests from Engineer. Engineer is entitled to rely upon and use, without independent verification and without liability, all information and services provided by the Client or the Client's representatives.

V. Termination of Work. Either the Client or the Engineer may terminate this Agreement at any time with or without cause upon giving the other Party ten (10) calendar days' prior written notice. Client agrees that termination of Engineer for Client's convenience shall only be utilized in good faith and shall not be utilized if either the purpose or the result of such termination is the performance of all or part of Engineer's services under this Agreement by Client or by another service provider. Following Engineer's receipt of such termination notice the Client shall, within ten (10) calendar days of Client's receipt of Engineer's final invoice, pay the Engineer for all services rendered and all costs incurred up to the date of Engineer's receipt of such notice of termination.

VI. Ownership of Documents. Upon Engineer's completion of services and receipt of payment in full, Engineer shall grant to Client a non-exclusive license to possess the final drawings and instruments produced in connection with Engineer's performance of the work under this Agreement, if any. Said drawings and instruments may be copied, duplicated, reproduced and used by Client for the purpose of constructing, operating and maintaining the improvements. Client agrees that such documents are not intended or represented to be suitable for reuse by Client or others for purposes outside the Scope of Services of this Agreement. Notwithstanding the foregoing, Client understands and agrees that any and all computer programs, GIS applications, proprietary data or processes, and certain other items related to the services performable under this Agreement are and shall remain the sole and exclusive property of Engineer and may not be used or reused, in any form, by Client without the express written authorization of Engineer. Client agrees that any reuse by Client, or by those who obtain said information from or through Client, without written verification or adaptation by

Engineer, will be at Client's sole risk and without liability or legal exposure to Engineer or to Engineer's employees, agents, representatives, officers, directors, affiliates, shareholders, owners, members, managers, attorneys, subsidiary entities, advisors, subconsultants or independent contractors or associates. Engineer may reuse all drawings, reports, data and other information developed in performing the services described by this Agreement in Engineer's other activities. Furthermore, The TWDB shall have unlimited rights to technical or other data resulting directly from the performance of services under this Agreement. It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this Agreement and developed by the Engineer(s) or its contracted parties pursuant to this Agreement shall become the joint property of the Engineer(s) and the TWDB. These materials shall not be copyrighted or patented by the Engineer(s) or by any consultants involved in this Agreement unless the EXECUTIVE ADMINISTRATOR of the TWDB approves in writing the right to establish copyright or patent; provided, however, that copyrighting or patenting by the Engineer(s) or its Subcontractors will in no way limit the TWDB's access to or right to request and receive or distribute data and information obtained or developed pursuant to this Agreement. Any material subject to a TWDB copyright and produced by the Engineer(s) or TWDB pursuant to this Agreement may be printed by the Engineer(s) or the TWDB at their own cost and distributed by either at their discretion. The Engineer(s) may otherwise utilize such material provided under this Agreement as it deems necessary and appropriate, including the right to publish and distribute the materials or any parts thereof under its own name, provided that any TWDB copyright is appropriately noted on the printed materials.

The Engineer(s) and its contracted parties agree to acknowledge the TWDB in any news releases or other publications relating to the work performed under this Agreement.

VII. Notices. Any notices to be given hereunder by either party to the other may be affected either by personal delivery, in writing, or by registered or certified mail.


VIII. Sole Parties and Entire Agreement. This Agreement shall not create any rights or benefits to anyone except the Client and Engineer and contains the entire agreement between the parties. For the purpose of this Agreement, the Engineer will be considered an independent Engineer and therefore solely responsible for liability resulting from negligent acts or omissions. Oral modifications to this Agreement shall have no force or effect.

IX. Insurance. The Engineer shall obtain all necessary insurance, in the judgment of the Engineer, to protect themselves, the Client, the TWDB, and employees and officials of the TWDB from liability arising out of this Agreement. Engineer shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement and for a period of four (4) years thereafter, professional liability insurance. The limits of liability shall be \$1,000,000 per claim and in the aggregate. Engineer shall submit to the Client a certificate of insurance prior to commencing any work for the Client.

X. Prompt Performance by Engineer. All services provided by Engineer hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent members of the engineering profession in the State of Texas applicable to such engineering services contemplated by this Agreement.

XI. Client Objection to Personnel. If at any time after entering into this Agreement, the Client has any reasonable objection to any of Engineer's personnel, or any personnel, professionals and/or consultants retained by Engineer, Engineer shall promptly propose substitutes to whom the Client has no reasonable objection, and Engineer's compensation shall be equitably adjusted to reflect any difference in Engineer's costs occasioned by such substitution.

XII. Assignment and Delegation. Neither the Client nor Engineer may assign their rights or delegate their duties without the written consent of the other party. This Agreement is binding on the Client and Engineer to the fullest extent permitted by law. Nothing herein is to be construed as creating any personal liability on the part of any Client officer, employee or agent.

XIII. Jurisdiction and Venue. This Agreement shall be administered under the substantive laws of the State of Texas (and not its conflicts of law principles) which shall be used to govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation, its validity, interpretation, construction, performance and enforcement. Exclusive venue shall lie in any court of competent jurisdiction in **Travis County, Texas.** 

XIV. Integration, Merger and Severability. This Agreement and the Scope of Services, including fee and schedule are fully incorporated herein and represent the entire understanding of Client and Engineer. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered except in writing signed by both Parties. This Agreement constitutes, represents and is intended by the Parties to be the complete and final statement and expression of all of the terms and arrangements between the Parties to this Agreement with respect to the matters provided for in this Agreement. This Agreement supersedes any and all prior or contemporaneous agreements, understandings, negotiations, and discussions between the Parties and all such matters are merged into this Agreement. Should any one or more of the provisions contained in this Agreement be determined by a court of competent jurisdiction or by legislative pronouncement to be void, invalid, illegal, or unenforceable in any respect, such voiding, invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be considered as if the entirety of such void, invalid, illegal, or unenforceable provision had never been

contained in this Agreement.

XV. Exclusivity of Remedies. The Parties acknowledge and agree that the remedies set forth in this Agreement (Agreed Remedies) are and shall remain the Parties' sole and exclusive remedy with respect to any claim arising from, or out of, or related to, the subject matter of this Agreement. The Parties agree that Engineer is to have no liability or responsibility whatsoever to Client for any claim(s) or loss(es) of any nature, except as set forth in this Agreement. No Party shall be able to avoid the limitations expressly set forth in this Agreement by electing to pursue some other remedy.

XVI. Timeliness of Performance. Engineer shall perform its professional services with due and reasonable diligence consistent with sound professional practices and in accordance with the agreed upon schedule incorporated herein as "Exhibit B".

XVII. Dispute Resolution. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to schedule a series of no less than two meetings of senior personnel of Client and Engineer in which the disagreement or conflict will be discussed. The first of such meetings will be scheduled as soon as possible following identification of such disagreement or conflict and the second meeting must occur within thirty (30) days following the initial meeting. Subsequent meetings, if any may be scheduled upon mutual agreement of the parties. The parties agree that these two meetings are conditions precedent to the institution of legal proceedings unless such meetings will adversely affect the rights of one or more of the parties as such rights relate to statutes of limitation or repose.

XVIII. PROJECT ENHANCEMENT/BETTERMENT. IF A COMPONENT OF THE CLIENT'S PROJECT IS OMITTED FROM THE ENGINEER'S CONTRACT DOCUMENTS DUE TO THE BREACH OF CONTRACT OR NEGLIGENCE OF THE ENGINEER, THE ENGINEER WILL NOT BE LIABLE TO THE CLIENT TO THE EXTENT OF ANY BETTERMENT OR ADDED VALUE TO THE PROJECT. SPECIFICALLY, THE CLIENT WILL BE RESPONSIBLE FOR THE AMOUNT IT WOULD HAVE PAID TO THE CONSTRUCTION CONTRACTOR (OR SUPPLIER OR SUBCONTRACTOR OR OTHER) FOR THE COMPONENT AS IF SUCH HAD BEEN INCLUDED IN THE ENGINEER'S CONTRACT DOCUMENTS. NOTWITHSTANDING THE FOREGOING, THE ENGINEER WILL BE RESPONSIBLE, TO THE EXTENT REASONABLE AND NECESSARY TO PLACE CLIENT IN THE SAME POSITION IT WOULD HAVE BEEN BUT FOR SUCH BREACH OR NEGLIGENCE, FOR THE REASONABLE (I) RETROFIT EXPENSE, (II) WASTE, OR (II) INTERVENING INCREASE IN THE COST OF THE COMPONENT FURNISHED THROUGH A CHANGE ORDER FROM THE CONTRACTOR. TO THE EXTENT THAT CONTRACTOR PROVIDED UNIT PRICING THE CLIENT UNDERSTANDS AND AGREES THAT THE ISSUE OF INTERVENING UNIT COST INCREASES WOULD ONLY BE APPLICABLE TO NEWLY IDENTIFIED ITEMS, NOT INCREASES IN QUANTITY OF EXISTING ITEMS.

IF IT IS NECESSARY TO REPLACE A COMPONENT OF THE PROJECT DUE TO THE BREACH OF CONTRACT OR NEGLIGENCE OF THE ENGINEER, THE ENGINEER WILL NOT BE LIABLE TO THE CLIENT FOR THE ENHANCEMENT OR UPGRADE OF THE COMPONENT BEYOND THAT ORIGINALLY INCLUDED IN THE CONTRACT DOCUMENTS. IN ADDITION, IF THE COMPONENT HAS AN IDENTIFIABLE USEFUL LIFE THAT IS LESS THAN THE SYSTEM/STRUCTURE/IMPROVEMENT ITSELF, THE DAMAGES OF THE OWNER SHALL BE REDUCED TO THE EXTENT THAT THE USEFUL LIFE OF THE COMPONENT WILL BE EXTENDED BY THE REPLACEMENT THEREOF.

XIX. AGREED REMEDIES

A. IT IS THE INTENT OF THE PARTIES TO THIS AGREEMENT THAT ENGINEER'S SERVICES UNDER THIS AGREEMENT SHALL NOT SUBJECT ENGINEER'S INDIVIDUAL EMPLOYEES, OFFICERS OR DIRECTORS TO ANY PERSONAL LEGAL EXPOSURE FOR CLAIMS AND RISKS ASSOCIATED WITH THE SERVICES PERFORMED OR PERFORMABLE UNDER THIS AGREEMENT.

B. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND THE ENGINEER AND ACKNOWLEDGING THAT THE ALLOCATION OF RISKS AND LIMITATIONS OF REMEDIES ARE BUSINESS UNDERSTANDINGS BETWEEN THE PARTIES AND THESE RISKS AND REMEDIES SHALL APPLY TO ALL POSSIBLE LEGAL THEORIES OF RECOVERY. CLIENT FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR ANY REFERENCE TO INSURANCE OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE ENGINEER AND ENGINEER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO, THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSE OR CAUSES OF THE ENGINEER OR THE ENGINEER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED THE ENGINEER'S FEE RECEIVED FOR THE SERVICES PERFORMED UNDER THIS AGREEMENT OR ~~\$1,000,000~~, WHICHEVER IS GREATER. INCREASED LIMITS MAY BE NEGOTIATED FOR ADDITIONAL FEE.



C. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, ENGINEER SHALL HAVE NO LIABILITY TO THE CLIENT FOR CONTINGENT, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, REVENUE OR PROFIT; OPERATING COSTS AND FACILITY DOWNTIME; OR OTHER SIMILAR BUSINESS INTERRUPTION LOSSES, HOWEVER, THE SAME MAY BE CAUSED.

D. CLIENT MAY NOT ASSERT ANY CLAIM AGAINST ENGINEER AFTER THE SHORTER OF (1) 3 YEARS FROM SUBSTANTIAL COMPLETION OF SERVICES GIVING RISE TO THE CLAIM, OR (2) THE STATUTE OF LIMITATION PROVIDED BY LAW.

XX. State Auditor. By executing this Agreement, the Engineer accepts the authority of the State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this contract. The Engineer shall comply with and cooperate in any such investigation or audit. The Engineer agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The Engineer also agrees to include a provision in any subcontract related to this contract that requires the Engineer to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract.

XXI. Financial Record. The Engineer and its contracted parties shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by the EXECUTIVE ADMINISTRATOR of the TWDB. Accounting by the Engineer and its contracted parties shall be in a manner consistent with generally accepted accounting principles.

XXII. No Debt Against the State. This Agreement shall not be construed as creating any debt by or on behalf of the State of Texas and the TWDB, and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this Agreement transcends the biennium in which this Agreement is entered into, this Agreement is specifically contingent upon the continued authority of the TWDB and appropriations, therefore.

XXIII. Licenses, Permit. The Engineer shall be solely and entirely responsible for procuring all appropriate licenses and permits, which may be required by any competent authority for the Engineer to perform the subject work. The Engineer shall comply with BOARD rules and adhere to all requirements in state law pertaining to the procurement of professional services. The Engineer shall indemnify and hold the TWDB and the State of Texas harmless, to the extent the Engineer may do so in accordance with state law, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the Engineer, arising out of the activities under this Agreement.

XXIV. Regional Flood Planning Additional Requirements. It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this contract and developed by the Engineer pursuant to this Agreement shall become the joint property of the REGIONAL FLOOD PLANNING GROUP, Engineer and the Texas Water Development Board. These materials shall not be copyrighted or patented by the Engineer, Engineer agrees that neither the Regional Flood Planning Group nor the Texas Water Development Board are parties to this contract and agrees that that these entities have no liability under the terms of this contract. The Texas Water Development Board is solely a third-party beneficiary under this contract.

XXV. Wavier. Any failure by Engineer to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Engineer may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

XXVI. Signatories. The Client and Engineer mutually warrant and represent that the representation of each who is executing this Agreement on behalf of the Client or Engineer, respectively, has full authority to execute this Agreement and bind the entity so represented.

IN WITNESS WHEREOF, the parties, having read and understood this Agreement, have executed such in duplicate copies, each of which shall have full dignity and force as an original, on the ____ day of _____, 20__.

HALFF ASSOCIATES, INC.

By: _____
Signature

Printed Name

Title

Date

CLIENT: ARK-TEX COUNCIL OF GOVERNMENTS, TEXAS

By: _____
Signature

Printed Name

Title

Date

Regional Flood Planning Pre-Planning Public Meeting Requirements



Pre-Planning Meeting Background

- Provide background on formation of RFPGs and the Regional Flood Planning process.
- Gather suggestions and recommendations as to issues, provisions, projects, and strategies that should be considered in development of regional flood plan.



TWDB flood outreach meeting in Bastrop, TX.

Image: TWDB

About Regional Flood Planning

- First-of-its-kind statewide flood plan
- Watershed-based planning regions
- Bottom-up approach to flood planning
- Transparent process with public input
- Volunteer members representing interest categories

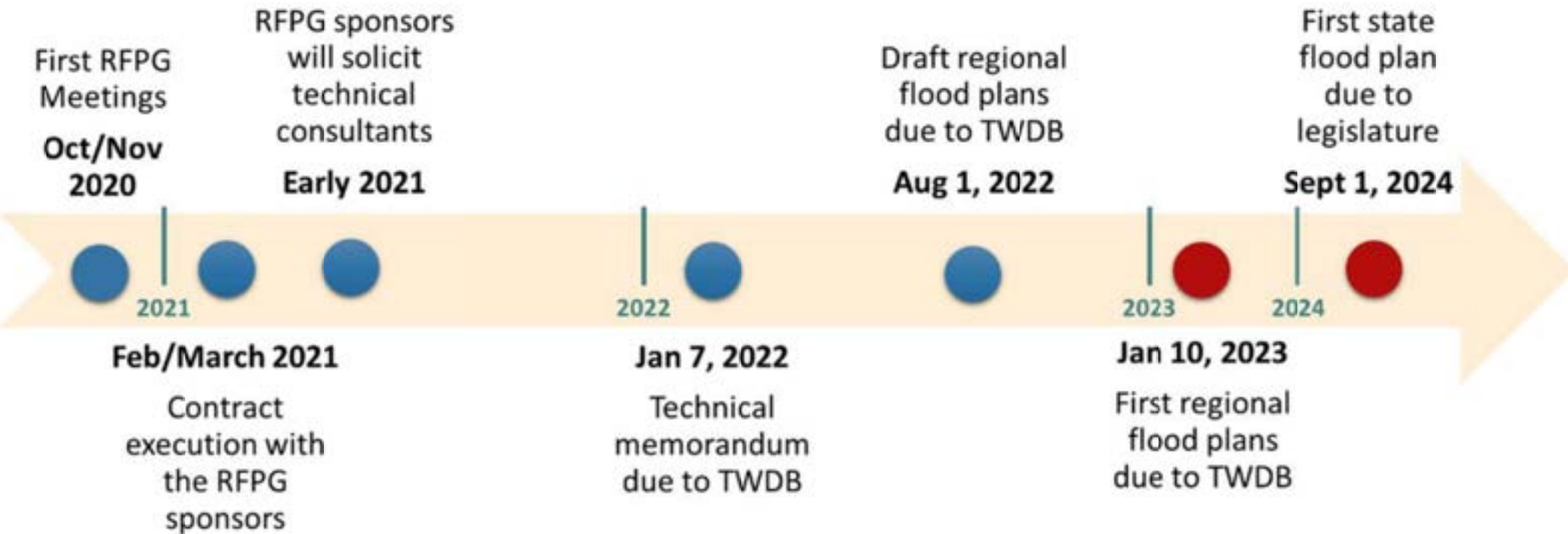


Find your RFPG Information, Meeting Schedules & Important Documents here:

<https://www.twdb.texas.gov/flood/planning/index.asp>

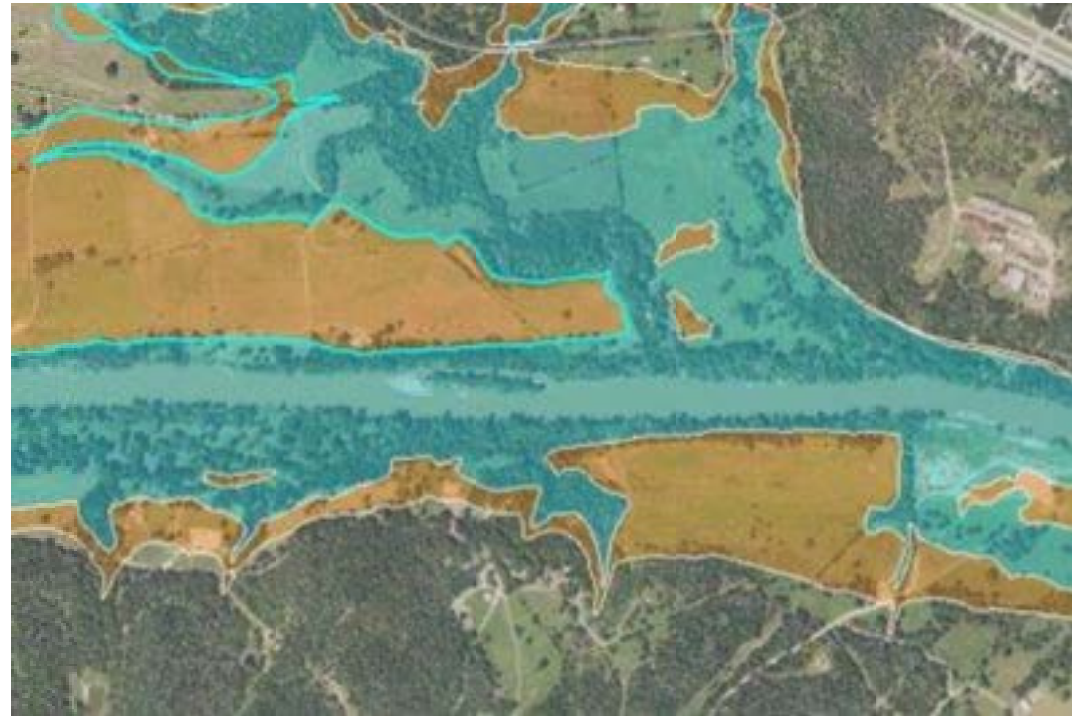
Flood Planning Timeline

SB 8 passed in 2019 requiring a statewide flood plan based on regional flood plans



Key Tasks of the RFPGs

- Gather & analyze data
- Identify existing and future flood risks
- Evaluate floodplain management practices
- Recommend evaluations, strategies, and projects to reduce flood risks
- Develop a regional flood plan



The 1% annual chance floodplain is shown in blue.
The 0.2% annual chance floodplain is shown in orange.
Image by FEMA

Flood Mitigation

The implementation of actions, including both **structural** and **non-structural solutions**, to reduce flood risk to protect against the loss of life and property.



Mangroves on the Texas Coast stabilize shorelines and help absorb storm surge; an example of a non-structural flood mitigation solution.

Photo by Univ. Of Texas Marine Science Institute



Galveston Seawall, a structural flood mitigation solution.

Image by [Yinan Chen CC-PD](#)

Additional Opportunities for Public Input

There will be many opportunities public involvement:

- public comments are received at every RFPG meeting
- there will be at least one meeting for the public to comment on a flood risk summary map to identify any flood risk not captured
- there will be at least two public pre-planning meetings to receive feedback and gather general suggestions
- the public will get to comment on the draft regional flood plan, once developed



TWDB flood outreach meeting in Bastrop, TX.

Image: TWDB

Find your RFPG Information, Meeting Schedules & Important Documents here:

<https://www.twdb.texas.gov/flood/planning/index.asp>



Image: Brent Hanson, U.S. Geological Survey. Public domain.

Questions? Comments?