

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES  
DRAINAGE STUDY OF MCCRARY ROAD, BRAZOSWOOD AND WOODS EDGE AREA**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Freese and Nichols, Inc. (hereinafter "Consultant"), a company authorized to conduct business in the State of Texas.

**WITNESSETH**

WHEREAS, County desires that Consultant to conduct a drainage study to develop a base hydraulic model for a certain location within Fort Bend County, Texas, generally consisting of the McCrary Road, Brazoswood, and the Woods Edge area, to be used to identify existing drainage patterns, main restricts to flow, and develop alternatives to improve drainage conditions, (hereinafter "Services"); and

WHEREAS, County 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, Consultant 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**

**Section 1. Scope of Services**

Consultant shall render Services to County as defined in the proposal attached hereto as Attachment A.

**Section 2. Personnel**

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

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

### **Section 3. Compensation and Payment**

3.1 The Maximum Compensation for the performance of Services within the Scope of Services described in Attachment A is one hundred forty-seven thousand six hundred dollars and 00/100 (\$147,600.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.

3.2 All performance of the Scope of Services by Consultant 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 County.

3.3 County will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to the County, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. County 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. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

### **Section 4. Limit of Appropriation**

4.1 Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of one hundred forty-seven thousand six hundred dollars and 00/100 (\$147,600.00) specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that County may become liable to pay to Consultant shall not under any conditions, circumstances, or interpretations thereof exceed one hundred forty-seven thousand six hundred dollars and 00/100 (\$147,600.00).

### **Section 5. Time of Performance**

Time for performance of the Scope of Services under this Agreement shall begin with receipt of the Notice to Proceed and end no later than five (5) months thereafter. Consultant shall complete the tasks described in the Scope of Services, within this time or within such additional time as may be extended by the County.



## **Section 6. 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.

## **Section 7. Termination**

7.1 Termination for Convenience – County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

### **7.2 Termination for Default**

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

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

7.2.1.2 If Consultant 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 County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Consultant 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 County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Consultant 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 County. Consultant's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County 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 Consultant.

#### **Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part of its work under this Agreement, shall become the property of County 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. Consultant shall promptly furnish all such data and material to County on request.

#### **Section 9. Inspection of Books and Records**

Consultant will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Services at mutually convenient times. County's right to inspect survives the termination of this Agreement for a period of four years. Notwithstanding the foregoing, Consultant shall bear no liability or responsibility for deliverables that have been modified post-delivery or used for a purpose other than that for which they were prepared under this Agreement.

#### **Section 10. Insurance**

10.1 Prior to commencement of the Services, Consultant shall furnish County 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 County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant 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. Consultant shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Best's 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 may be made on a Claims Made form with limits not less than \$1,000,000.

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

10.3 If required coverage is written on a claims-made basis, Consultant 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.

#### **Section 11. Indemnity**

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

#### **Section 12. Confidential and Proprietary Information**

12.1 Consultant 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 County. Any and all information of any form obtained by Consultant or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant 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 Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant'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 Consultant who can be shown to have had no access to the Confidential Information.

12.2 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant 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 County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise County immediately in the event Consultant 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 Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant 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 County's request, Consultant will promptly turn over to County all documents, papers, and other matter in Consultant's possession which embody Confidential Information.

12.3 Consultant 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 County that is inadequately compensable in damages. Accordingly, County 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. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

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

12.5 Consultant expressly acknowledges that County 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, County 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 County 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.



### **Section 13. Independent Contractor**

13.1 In the performance of work or services hereunder, Consultant 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 Consultant or, where permitted, of its subcontractors.

13.2 Consultant 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 County and shall not be entitled to any of the privileges or benefits of County employment.

### **Section 14. 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:

County: Fort Bend County  
Attn: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

With a copy to: Fort Bend County  
Attn: Commissioner Precinct 1  
301 Jackson Street  
Richmond, Texas 77469

Consultant: Freese and Nichols, Inc.  
Attn: Michael V. Reedy  
10497 Town and Country Way, Ste 600  
Houston, Texas 77029

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.

**Section 15. Compliance with Laws**

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

**Section 16. Standard of Care**

Consultant represents to County that Consultant has the skill and knowledge ordinarily possessed by members of its trade or profession practicing in the greater Houston metropolitan area and Consultant will apply that skill and knowledge with care and diligence so that the Services provided hereunder will be performed and delivered in accordance with the prevailing professional standards.

**Section 17. Assignment**

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.

**Section 18. 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 County's sovereign immunity.

**Section 19. Successors and Assigns**

County and Consultant 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.



**Section 20. Third Party Beneficiaries**

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

**Section 21. 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.

**Section 22. Publicity**

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

**Section 23. 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.

**Section 24. Conflict**

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

**Section 25. Certain State Law Requirements for Contracts**

25.1 Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Consultant verifies Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

25.2 Texas Government Code Section 2251.152 Acknowledgment: By signature below, Consultant represents pursuant to Section 2252.152 of the Texas Government Code, that Consultant is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

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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 date signed by the last party hereto.

FORT BEND COUNTY

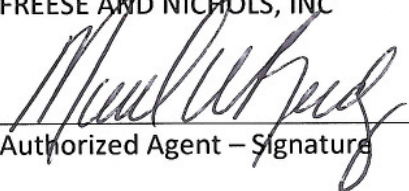
\_\_\_\_\_  
Robert E. Hebert, County Judge

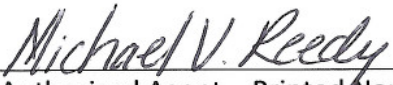
\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

FRESE AND NICHOLS, INC

  
\_\_\_\_\_  
Authorized Agent – Signature

  
\_\_\_\_\_  
Authorized Agent – Printed Name

  
\_\_\_\_\_  
Title

  
\_\_\_\_\_  
Date

#### AUDITOR'S CERTIFICATE

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

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

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# ATTACHMENT A

**Attachment A**  
**Scope of Work**  
**Drainage Study of McCrary Road, Brazoswood, and Woods Edge Area**

The objective of this study is to develop a base hydraulic model for the study area shown in Exhibit 1, generally consisting of the McCrary Road, Brazoswood, and Woods Edge areas. The base hydraulic model will be used to identify existing drainage patterns, main restrictions to flow, and to develop alternatives to improve drainage conditions.

**BASIC SERVICES:** Freese and Nichols, Inc. (FNI) (Consultant) will complete the following tasks for Fort Bend County for a **total lump sum fee of \$ 147,600**

**TASK 1. Data Collection and Evaluation \$ 31,700**

The Consultant will utilize the following data:

- GIS Data:
  - 2014 Lidar, bare points and Raster
  - Existing land use
  - Tracts/Parcels
  - Right of Way and drainage easements
  - District survey benchmarks
  - Recent aerial photos
- Survey of key drainage structures such as culverts, bridges, and channel dams will be performed by Weisser Engineering and surveying, Exhibit 1 shows the location of the structures to be collected. Minor drainage structures such as driveway culverts will not be collected as part of this scope of work. Survey includes sizes, materials, flowline elevations, and geo-referenced pictures at each end of the structure.

Data will be evaluated and organized as necessary to be utilized in subsequent tasks.

Consultant will complete a field visit to document current conditions of the study area. The information collected during the field visit (photographs, measurements) will aid in the development of the hydraulic model.

**TASK 2. Existing Conditions \$ 46,900**

The draft hydrologic model for Jones Creek created by Costello Engineering will be used as the baseline for hydrology. This model will be updated to provide additional detail within the study area. Flows for the 2-yr, 5-yr, 10-yr, 25-yr, 100-yr, and 500-yr events will be developed.

A new hydraulic model will be developed using HEC-RAS 2D and will be based on 2014 LiDAR supplemented with field survey. The approximate extents of the hydraulic model are shown in Exhibit 1. The hydraulic model will include enough detail to quantify the flows, drainage patterns, depths of ponding, and interaction between Jones Creek and the study area. This scope of work doesn't incorporate an evaluation of the interaction with the Brazos River.



Main drainage structures will be incorporated into the hydraulic model, due to budget constraints, minor structures such as driveway culverts will not be incorporated as part of this scope of work.

The hydraulic model will be executed for each storm event listed above and inundation maps showing the incremental floodplain from each storm event will be developed.

Results from this analysis will be evaluated, and the main causes of drainage deficiencies will be identified and summarized.

#### **TASK 4. Alternatives \$ 46,700**

The hydraulic model for existing conditions will be modified to evaluate alternatives to alleviate drainage issues. The magnitude of the alternatives will be limited to what is practical for implementation, and will consider existing ROW, drainage easements or known future road projects. Alternatives to be evaluated will fall within these categories:

1. Upsize existing culverts along main waterways; one alternative per crossing will be evaluated.
2. #1 combined with increased conveyance of main waterways; one channel section will be evaluated for the main waterways.
3. #2 combined with additional waterways such as diversion channels, large trunklines, or connectivity to nearby systems.

Opinion of Probable Construction Costs will be developed for the recommended alternatives and will be grouped by County Precinct.

The benefit from each alternative will be summarized in inundation maps that will show the reduction in inundated areas for each storm event.

Due to the nature of this study and the significant drainage issues in the study area, the alternatives will focus on increasing the conveyance of flows. As such, there may be increases in discharges to the main waterways. Although mitigation of those increases is not included in this scope of work, FNI will identify potential locations where detention ponds could be located. Detailed analysis of these locations should be considered as part of future studies.

#### **TASK 5. Inspection of Channel Dam \$ 2,900**

An inspection of the channel dam located within the Paksima/Barron property will be completed. County personnel will coordinate access to the property and accompany FNI personnel during the inspection.

The purpose of this inspection is to document the condition of the structure, and to provide general recommendations. A technical memorandum documenting the inspection will be prepared.

#### **TASK 6. Deliverables \$ 8,500**

Deliverables include GIS datasets, H&H models, and a technical memorandum documenting findings.

**GIS Datasets:**

- Field survey used to build Hydraulic model
- Georeferenced photographs taken during field visit
- Terrain used for floodplain mapping
- Inundation extents for existing conditions
- Inundation extents for proposed conditions

**H&H Models**

- Hydrologic model, HEC-HMS 4.2
- Hydraulic model, HEC-RAS 5.0.4

A brief technical memorandum will document the data collected, assumptions, and results. FNI will respond to one round of review comments from the County and make necessary updates to the document.

**TASK 6. Project Management \$ 10,900**

Consultant will provide Project Management services including project coordination and communications with the County and monthly status reporting.

Conduct up to a total of three (3) Team meetings with County staff to present assumptions, and results. These meetings are anticipated as follows:

1. Kickoff and data collection meeting
2. Present results from the existing conditions analysis
3. Present results of the alternative analysis

It is anticipated that the technical tasks will be completed within five months from Notice to Proceed.





#### Legend

- Survey
- Drainage Ways
- Extents of Model
- Focus\_Area
- Jones Creek

Date Saved: 4/30/2018 11:00:19 AM

PROJECT NO	FBI-4595
DATE CREATED	Date: 4/30/2018
DATUM & COORDINATE SYSTEM	NAD83 State Plane (feet) Texas South Central
FILE NAME	Name: Workmap
PREPARED BY	DCJ



## FORT BEND COUNTY Drainage Study

# McCrary Road, Brazoswood and Woods Edge



FREESE AND NICHOLS, INC.  
10497 TOWN AND  
COUNTRY WAY, SUITE 600  
HOUSTON, TEXAS 77024  
P: 713.600.6865  
F: 713.600.6801

Exhibit

1