

STATE OF TEXAS                   §  
   §  
COUNTY OF FORT BEND       §

**AGREEMENT FOR RESEARCH SERVICES FOR  
REVIEW OF COUNTY-WIDE WATERSHED STUDY SUBMITTALS**

THIS AGREEMENT is made and entered into by and between Fort Bend County Drainage District, (hereinafter "District"), a body corporate and politic under the laws of the State of Texas, and William Marsh Rice University (hereinafter "University"), an institution of higher education in the State of Texas.

**WITNESSETH**

WHEREAS, District desires that University provide research services in assistance reviewing county-wide watershed study submittals for the District, (hereinafter "Services"); and

WHEREAS, 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, University 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**

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

**Section 2. Personnel**

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

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

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

A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is three hundred fifty thousand and no/100 dollars (\$350,000.00). In no case shall the amount paid by District under this Agreement exceed the Maximum Compensation without written amendment executed by the parties.

B. All performance of the Scope of Services by University 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 District.

C. University shall submit to District staff designated by the Chief Engineer, one (1) electronic (pdf) and/or one (1) original invoice on a monthly basis showing the amounts due for services performed on or before the tenth (10<sup>th</sup>) day of each calendar month during the progress of the Services. District shall review such invoices and approve them within thirty (30) calendar days with such modifications as are consistent with this Agreement and forward same to the Fort Bend County Auditor for processing. District shall pay each such approved invoice within thirty (30) calendar days. District reserves the right to withhold payment pending verification of satisfactory work performed.

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

A. University clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that District shall have available the total maximum sum of three hundred fifty thousand and no/100 dollars (\$350,000.00), specifically allocated to fully discharge any and all liabilities District may incur.

B. University does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that University may become entitled to and the total maximum sum that District may become liable to pay to University shall not under any conditions, circumstances, or interpretations thereof exceed three hundred fifty thousand and no/100 dollars (\$350,000.00).

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

The time for performance of the Scope of Services by University shall begin with receipt of the Notice to Proceed from District and end no later than six (6) months thereafter. University shall complete the tasks described in the Scope of Services (attached hereto as Exhibit A) within this time or within such additional time as may be extended by the District.

### **Section 6. Modifications and Waivers**

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

B. 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.

C. 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**

A. Termination for Convenience – Either party may terminate this Agreement at any time upon thirty (30) days written notice issued by the other party. For the District, notice must be issued by the County Judge upon authorization granted by its Board of Directors.

B. Termination for Default

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

a. If University fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the District in writing;

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

2. If, after termination, it is determined by District that for any reason whatsoever that University was not in default, or that the default was excusable, services may continue in accordance with the terms and conditions of this Agreement or the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the District in accordance with Section 7A above.

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

D. If 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 University.

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

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

presentation materials, etc., may be used by District on a non-exclusive royalty-free basis, solely for internal, non-commercial research purposes.

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

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

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

A. Prior to commencement of the Services, University shall furnish 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 District. University shall provide certified copies of insurance endorsements and/or policies if requested by District. University 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. University shall obtain such insurance written on an Occurrence form 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:

1. Workers Compensation in accordance with the laws of the State of Texas.
2. 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.
3. 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.
4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
5. Professional Liability insurance with limits not less than \$1,000,000.

B. District and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of University shall contain a waiver of subrogation in favor of District and members of Commissioners Court. In lieu of liability insurance, verification of self-insurance may be acceptable. If Excess or Stop Loss Insurance is maintained above a self-insured retention (SIR), the District (certificate holder) shall be named as an Additional Insured on a Primary & Non-Contributory basis.

C. If required coverage is written on a claims-made basis, University 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 the work under this Contract is completed.

D. University shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by District.

E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to District.

F. Approval of the insurance by District shall not relieve or decrease the liability of the University.

#### **Section 11. Liability**

Each party shall be responsible for its own acts and actions and any loss, liability, damage, cost or expenses resulting therefrom and shall not be responsible for the acts of the other party. Each party will assume all risks and liability to itself, its agents, or employees for any injury to persons or property to the extent such negligent conduct results from its own acts and/or acts of its agents or employees performing under this Agreement.

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

A. Definition. The term "Confidential Information" shall include all information disclosed by one party, "the Disclosing Party," to the other party, "the Receiving Party," in any manner or media regarding the research. Any Confidential Information disclosed by either party must be marked as "confidential" at the time of disclosure or, if disclosed orally or visually, must be identified as such at the time of disclosure and reduced to written, printed or other tangible form, marked as "confidential" and delivered to the other party within ten (10) days from the date of disclosure. Notwithstanding the foregoing, Confidential Information shall not include information that: (i) is already available without restriction to the general public, (ii) becomes available without restriction to the general public through no act or omission of the Receiving Party or any breach of this Agreement, or (iii) is independently obtained by the Receiving Party without being subject to any confidentiality obligation.

B. Limitations on Disclosure and Use. The Receiving Party shall, for a period of three (3) years after receipt of the Confidential Information, hold all Confidential Information in strictest confidence and shall not record, reproduce, reference, disseminate or disclosure any part thereof in any manner or media without the prior written consent of the Disclosing Party. The Receiving Party shall use all Confidential Information solely for the purpose of the Agreement and not for the benefit of any other person or entity.

C. Permitted Disclosures. The Receiving Party shall not be required to keep confidential any Confidential Information that is required to be disclosed by the Receiving Party in order to comply with any subpoena or other mandatory legal process or requirement.

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

E. University expressly acknowledges that 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, 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 District by University 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.

### **Section 13. Independent Consultant**

A. In the performance of work or services hereunder, University 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.

B. University 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 District and shall not be entitled to any of the privileges or benefits of District employment.

### **Section 14. Notices**

A. 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).

B. 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:

District: Fort Bend County Drainage District  
Attn: Chief Engineer  
301 Jackson Street  
Rosenberg, Texas 77469

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

University: William Marsh Rice University  
6100 Main Street, MS 317  
Houston, Texas 77005

C. Notice is effective only if the party giving or making the Notice has complied with subsections 14(A) and 14(B) and if the addressee has received the Notice. A Notice is deemed received as follows:

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.

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**

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

**Section 16. Performance Representation**

A. University represents to District that University is an academic research institution and that the research is of an experimental nature and the work performed will meet the standards of an academic institution.

B. University will materially conform to all requirements and specifications contained in the attached Exhibit A.

**Section 17. Assignment and Delegation**

A. 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 by University are prohibited under this subsection, whether they are voluntarily or involuntarily, without first obtaining written consent from District.

B. Neither party may delegate any performance under this Agreement unless prior written approval is received from the Drainage District's Chief Engineer.

C. 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 District's sovereign immunity.

**Section 19. Successors and Assigns**

District and University 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 District. Under no circumstances whatsoever, shall University release any material or information developed or received in the performance of the Services hereunder without the express written permission of District, 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 attachments, this Agreement controls.

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

For purposes of sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, University hereby verifies that University and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

25.1 Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.



25.2 If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, University does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code.

25.3 If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, University does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in section 809.001 of the Texas Government Code.

25.4 If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, University does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in section 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code.

#### **Section 26. Human Trafficking**

BY ACCEPTANCE OF AGREEMENT, CONSULTANT ACKNOWLEDGES THAT THE COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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 DRAINAGE DISTRICT

WILLIAM MARSH RICE UNIVERSITY

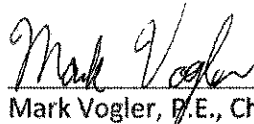
\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Date

ATTEST:

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

APPROVED:

  
\_\_\_\_\_  
Mark Vogler, P.E., Chief Engineer

*Laurie Sandel*

Digitally signed by Laurie  
Sandel  
Date: 2022.06.09 15:57:28  
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Authorized Agent- Signature

\_\_\_\_\_  
Laurie Sandel  
Authorized Agent- Printed Name

\_\_\_\_\_  
Contracts Specialist III  
Title

\_\_\_\_\_  
6/9/2022  
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 Drainage District under this contract.

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

# EXHIBIT A



Mr. Mark Vogler  
District Engineer  
Fort Bend County Drainage District  
1124 Blume Rd.  
Rosenberg, TX 77471

March 18, 2022

Re: Rice/SSPEED Proposal to Review County-wide Watershed Study Submittals

Mr. Vogler:

The Fort Bend County Drainage District (FBCDD) had contracted with Freese and Nichols, Inc. (FNI) to conduct a County-wide Watershed Study for updating the hydrologic and hydraulic models and associated floodplains for various streams and creeks throughout the county, including developing master drainage plans for these creeks, as well as updating the FBCDD's Drainage Criteria Manual. Part of the reason for this update was to incorporate the new Atlas 14 statistical rainfall data, that were published a few years ago following the Harvey 2017 storm event, to better reflect the flood risks in the county.

FNI has recently been completing this work and submitting its final products for most of the watersheds that were studied. In conducting this update, FNI introduced some new methodologies for both the hydrologic and hydraulic analyses that differ from those that have been adopted and used by the FBCDD for decades. Apparently, there have been some issues raised regarding how applicable these new methodologies are for the undeveloped portions of the county and the accuracy of their results.

As a result, the SSPEED Center at Rice University is submitting this proposal to review these new methodologies associated with the submittals for the County-wide Watershed Study, particularly as to the undeveloped watersheds in the county, recommend any changes that may be appropriate to better reflect the flood risks in those portions of the county, and then update the submittals as appropriate. The Proposed Scope of Work associated with this proposal, along with an estimated budget and timetable for completing this work, is provided herein as Attachment 1.

Thank you for considering this proposal to assist the FBCDD in its efforts to improve its understanding of the flood risks facing the county.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Bedient'.

Philip B. Bedient, Director SSPEED Center  
Chair, Civil and Envi Engineering (713 303 0266)  
Rice University, Houston, Tx 77005

## **SSPEED Center - ATTACHMENT 1**

### **Scope of Work for FBCDD re: review of County-wide Watershed Study**

- 1. Review and Recommend any modifications/adjustments to study submittals for Selected Watersheds/Creeks listed below**
  - A. HMS models**
    - i. Infiltration methodology (i.e. Green & Amp parameters)**
    - ii. Unit Hydrograph methodology (i.e. BDF equations)**
  - B. RAS models**
    - i. 1D/2D composite**
    - ii. Optional - 1D unsteady**
    - iii. Optional - 2D – channel and floodplain only**
    - iv. Optional - 2D entire watershed (hydrology and hydraulics)**
  - C. Floodplain mapping (100-yr and 500-yr)**
  - D. Master Drainage Plans**
  - E. Submit interim report summarizing results of review and recommendations**
- 2. Incorporate all approved modifications/adjustments into study submittals**
  - A. Develop updated/revised models for Selected Watersheds/Creeks**
  - B. Run Atlas 14 rainfall for 2, 5, 10, 25, 50, 100 and 500-yr storms using updated/revised models**
  - C. Update floodplain mapping for 100- and 500-yr events using results from updated/revised models**
  - D. Update Master Drainage Plans for Selected Creeks using updated/revised models**
  - E. Update Drainage Criteria Manual Sections 2, 6 and 8 based on updated/revised models for Selected Watersheds/Creeks and other models for the remaining watersheds/creeks in the county**
- 3. Submit report summarizing work performed to update study information based on modifications/adjustments to study submittals**
  - A. Provide updated models for Selected Watersheds/Creeks**
  - B. Provide updated floodplain maps for Selected Creeks**
  - C. Provide updated Master Drainage Plans for Selected Creeks**
  - D. Provide updated DCM Sections 2, 6 and 8**
- 4. Attend at least monthly meetings with FBCDD staff to provide status of work**

**This Scope of Work is estimated to be completed within 6 months of obtaining authorization to proceed from Fort Bend County.**

**The budget for the above Scope of Work is estimated for Tasks 1-4 to be as follows:**

1. \$ 90,000
2. \$ 150,000
3. \$ 100,000
4. \$ 10,000
- \$ 350,000

**Only Bold-faced Fort Bend County Watersheds/Creeks to be Studied/Reviewed**

1. Harris County
  - A. Willow Fork Buffalo Bayou
  - B. Keegans Bayou
  - C. Brays Bayou
  - D. Sims Bayou
  - E. Clear Creek
2. Brazos River Watershed
  - A. Brazos River
  - B. **Big Creek/Dry Creek/Fairchilds Creek/Seaborne Creek/Coon Creek/Cottonwood Creek/Deer Creek/II-B-7/II-B-9/Gapps Slough/ Dutch John**
  - C. Bessie's Creek/Brookshire Creek/Hody Creek
  - D. Jones Creek/Flewellen Creek/Andrus Creek
  - E. Oyster Creek/Red Gully/Stafford Run/Long Point/Flatbank Creek/Mustang Creek
  - F. Bullhead Bayou/Ditch H
  - G. Rabbs Bayou
  - H. **Robinowitz Ditch**
  - I. Pleasant Gully
  - J. Briscoe Ditch
  - K. Cow Creek/Bee Creek/Turkey Creek
3. San Bernard River Watershed
  - A. San Bernard River
  - B. Snake Creek
  - C. Turkey Creek
  - D. Dry Branch
  - E. Cedar Creek/Buffalo Creek
  - F. Mound Creek/Guy Creek