

**TESTING SERVICES AGREEMENT
BETWEEN
THE U.S. ARMY ENGINEER RESEARCH AND DEVELOPMENT CENTER
COASTAL AND HYDRAULICS LABORATORY
AND
THE FORT BEND COUNTY DRAINAGE DISTRICT**

This Agreement is hereby entered into between the Fort Bend County Drainage District, (hereinafter referred to as the PURCHASER), located at 1124 Blume Road, Rosenberg, Texas 77471, and the United States of America, as represented by the Director, U.S. Army Engineer Research and Development Center, Coastal and Hydraulics Laboratory (ERDC-CHL), located at Vicksburg, MS, hereinafter referred to as the GOVERNMENT, located at 3909 Halls Ferry Road, Vicksburg, MS 39180-6199.

NAME OF TEST OR NATURE OF SERVICE: ERDC-CHL Field Data and Analysis Branch (FDCAB) will conduct a current Multi-beam and Mobile LiDAR survey of the Brazos River throughout Fort Bend County. This area consists of approximately 92 miles of the Brazos River. Specific details of the work to be undertaken are described in Appendix A that is an integral part of this agreement.

PURPOSE: The requested bathymetric and topographic data collection is in accordance with the recommendation per the Brazos River FRM Study of 2020 to obtain updated Multi-beam bathymetry and in-bank LiDAR data every 5-years. The requested project data collection will be consistent with the previous data collection survey performed by USACE- FDCAB along the Brazos River in March 2019.

WHEREAS, 10 U.S.C. 4892 (a)(3) gives the secretaries of the military departments authority to make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software and other items.

WHEREAS, PURCHASER certifies that the services to be provided hereunder by the ERDC-CHL are not otherwise reasonably and expeditiously available from the private sector.

WHEREAS PURCHASER has requested, and the GOVERNMENT has agreed to conduct and/or furnish, certain testing services as described above.

NOW THEREFORE PURCHASER and the GOVERNMENT agree to the following terms and conditions that shall govern the conduct and/or furnishing of such testing services.

Article 1. Disclosure of Results. It is understood that the GOVERNMENT will accept the item(s) listed for the stated testing service and that neither information submitted for use in such testing service, nor any testing results shall be disclosed outside the Department of Defense without the written consent of the persons for whom the tests are performed.

Article 2. Import/Export.

2.1 Export Control Laws. The PURCHASER understands that this Agreement may involve technology and SUBJECT DATA which is subject to export control laws and regulations, and each PARTY is responsible for its own compliance with such laws and regulations. Consideration has been given to the provisions of Executive Order 12591. If it is determined that, under the International Traffic Arms Regulation (ITAR) (22 CFR 120-130) or Export Administration Regulation (EAR) (Title 15, Code of Federal Regulations, Chapter 7) controls are required on testing results which may be transferred under this Agreement, such controls shall be appropriately documented. Nothing in this Agreement waives any such statutory or regulatory requirement. The Purchaser is hereby placed on legal notice that an export license issued by the U.S State Department or U.S. Department of Commerce may be required before transporting or exporting data, test results, test analyses, commodities, or products to a foreign country or to a non-United States citizen with a business or domicile within the United States.

2.2 PURCHASER is solely responsible for importation/exportation requirements associated with shipping/delivery/removal of the test article(s) unless the Parties otherwise agree in writing.

Article 3. Location and Date. The testing services shall be conducted by the U.S. Army Engineer Research and Development Center, Coastal and Hydraulics Laboratory. Work shall commence on a date and time convenient to the GOVERNMENT as determined by the laboratory director who will notify PURCHASER of the estimated beginning and completion dates. The work shall be conducted on a non-interference basis with the laboratory mission effort.

Article 4. Force Majeure. Neither party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement (and which it has been unable to overcome by the exercise of due diligence), including, but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightening and other natural catastrophes, epidemic, war, riot, civic disturbance and disobedience, strikes, labor dispute, or failure, threat or failure, or sabotage, or any order or injunction made by a court or public agency. In the event of the occurrence of such majeure event, the party unable to perform shall promptly notify the other party. It shall further use its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

Article 5. Responsibility for Costs. The cost of labor, supplies, materials, equipment, overhead, and other expenses, both direct and indirect, computed in accordance with the laboratory's standard accounting procedures that are incurred by the laboratory and are necessary to the performance of the work as agreed to by the parties are chargeable to Purchaser. Additionally, it is understood and agreed that PURCHASER will bear all costs for transportation, packing, crating, and other costs relating to the item(s) submitted for testing services, including that which the GOVERNMENT may, for its own convenience, perform or cause to be performed.

Article 6. Estimated Costs. The estimated cost of the testing services to be provided by the GOVERNMENT as set forth in Appendix A will not exceed the sum of \$172,152.00 without prior written authorization by PURCHASER. It is understood and agreed that the GOVERNMENT will notify in a timely manner PURCHASER in the event of any change in the original cost or time estimate. In no event shall the costs incurred by the GOVERNMENT exceed the funds deposited by PURCHASER.

Article 7. Payment.

7.1. Prior to commencement of the testing services, Purchaser will deposit with the laboratory sufficient funds to cover the estimated cost of work to be performed by the laboratory. Any funds remaining after the GOVERNMENT is reimbursed their costs shall be returned to the PURCHASER.

7.2 Many financial management systems, including that used by the U.S. Army Corps of Engineers, require that the employer's tax identification number (EIN) be entered during setup of a new account. Accordingly, this information is provided below:

ERDC EIN: 62-1642142
PURCHASER EIN: 74-6001969
PURCHASER Cage Code Number: 5HHK4

7.3 There are three ways funds may be sent to ERDC.

a. Check - In order for the work effort to be commenced in time, funds must be mailed thirty (30) days in advance. Checks should be made payable to "Treasury of the United States – ERDC-CHL" and forwarded to:

U.S. Army Engineer Research and Development Center
ATTN: CEERD- RMF-O / Vickie S. Pratt
3909 Halls Ferry Road
Vicksburg, MS 39180-6199

The following information must be included with the check.
ERDC-CHL Point of Contact: Anthony Jackson, PHONE 601-634-2338,
Anthony.R.Jackson@usace.army.mil

Funds provide for Testing Service Agreement (TSA-2024-CHL-5652) for "2024 Survey of the Brazos River, Fort Bend County, TX."

b. EFT – In order for the work effort to be commenced in time, EFT funds must be received two weeks in advance.

For EFT transactions (CCD+ or CTX):

Bank Name: Cash Link - Ach receiver
Account Name: USACE Finance Center (U4)
Account Number: 220025
Bank Address: Riverdale MD, 301-887-6600
Bank ABA number: 051036706
Account type: checking

c. Wire Transfer – In order for the work effort to be commenced in time, wire transfer funds must be received two weeks in advance.

For a type 1000, Third Party Wire Transfer transaction:

Bank Name: TREAS NYC/Funds Transfer Division

Account Name: TREAS NYC/CTR/BNF (U4)

Account Number: 00008736

Bank Address: Federal Reserve Bank New York City, New York

Bank ABA number: 021030004

Finance Center Point of Contact:

Linda Sheehan

Phone: (901) 873-9138

Fax: (901) 873-9260

ERDC Point of Contact

Vickie S. Pratt

Phone: (601) 634-5167

Article 8. Authorized Representatives. The authorized representatives of each party are identified in Appendix A. These representatives are to act upon all administrative matters arising under this Agreement but are not authorized to change any of the terms and/or conditions of this Agreement.

Article 9. Liability and Removal. PURCHASER and GOVERNMENT agree that:

9.1. The GOVERNMENT shall not be liable for loss or destruction of or damage to the test item(s), or for any other damages, whether direct or consequential.

9.2. Unless otherwise specified in the work statement, upon completion or termination of the testing services, and receipt by PURCHASER of notification of such completion or termination, PURCHASER will, at its own expense, promptly remove the test item(s) from the GOVERNMENT's premises.

Article 10. No Warranty. Except as specifically noted herein, the GOVERNMENT makes no express or implied warranty as to any matter whatsoever, including the conditions or results of the testing services.

Article 11. Indemnification. To the extent permitted by applicable law, PURCHASER agrees to hold harmless and indemnify the GOVERNMENT against the following insofar as they may result from the performance of the services in Appendix A:

11.1. Claims including reasonable expense of litigation or settlement by third persons (including employees of the Purchaser) - for death, bodily injury (including sickness or disease) or loss of, damage to, or loss of use of property, and

11.2. Loss of or damage to property of the GOVERNMENT or property in its

Purchaser's sole custody and loss of use of such property.

11.3. Nothing in this Agreement shall be construed as a waiver of sovereign immunity of GOVERNEMENT or PURCHASER

Article 12. Endorsement. PURCHASER agrees not to circulate, refer to, or otherwise use for publicity or advertising purposes the results of the testing services conducted by the GOVERNMENT in any manner that will bear a connotation of endorsement of a product by the GOVERNMENT.

Article 13. Test Observers/Visitors. The GOVERNMENT reserves the right to limit the number and term of visits of observers and/or participants at the test facility. Non-United States citizens are subject to additional restrictions and will be considered on a case-by case basis. Travel and/or visits by FOREIGN NATIONALS to ERDC-Lab facilities will be governed by the provisions of Army Regulation 380-10, Disclosure of Information and Visits of Foreign Nationals. Travel and/or visits by FOREIGN NATIONALS require advanced notification. Advanced coordination for visits by foreign nationals should be forwarded to:

Director
U.S. Army Engineer Research and Development Center
ATTN: CEERD-SE (Teresa A. Johnson)
3909 Halls Ferry Road
Vicksburg, MS 39180-6199
Phone: (601) 634-2891
Teresa.A.Johnson@usace.army.mil

Article 14. Duration of Testing. In no case will this agreement extend beyond *October 1, 2025* unless it is revised in writing. Amendments to this Agreement are subject to the mutual agreement of the parties and must be signed by authorized representatives of both the ERDC-CHL and PURCHASER.

Article 15. Termination

15.1. The GOVERNMENT, by written notice, may terminate this Agreement, in whole or in part, when it is in the GOVERNMENT's interest, such as when it is determined to be in the national interest to reassign the Federal personnel or Federal facilities to other duties. Except in an emergency situation, thirty (30) days written notice will be given to PURCHASER or Non-Federal Party to this Agreement prior to termination.

15.2. PURCHASER or Non-Federal Party to this Agreement may terminate the Agreement, in whole or in part, when in its interest, upon providing thirty (30) days written notice. However, all expenses incurred by the GOVERNMENT prior to the notice of termination action will be borne by the Non-Federal Party. Any funds remaining after the GOVERNMENT is reimbursed their costs shall be returned to the Non-Federal Party.

For the FORT BEND COUNTY DRAINAGE DISTRICT:

ATTEST:

KP GEORGE
COUNTY JUDGE

Date: _____

LAURA RICHARD
COUNTY CLERK

Date: _____

APPROVED:



MARK A. VOGLER, PE
GENERAL MANAGER/ CHIEF ENGINEER

Date: _____

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County Drainage District within the foregoing Agreement.

Robert Ed Sturdivant, District Auditor

For the UNITED STATES ARMY ENGINEER RESEARCH AND DEVELOPMENT
CENTER, CHL

FLOWERS.KEI Digitally signed by
FLOWERS.KEITH.1242834816
Date: 2024.06.18 10:23:58 -05'00'
TH.1242834816

TY V. WAMSLEY, PhD, PE, SES
DIRECTOR

Date: 18 June 2024

For the UNITED STATES ARMY ENGINEER RESEARCH AND DEVELOPMENT
CENTER, CHL

TY V. WAMSLEY, PhD, PE, SES
DIRECTOR

Date: _____

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX A STATEMENT OF WORK

1. **Background:** ERDC-CHL will collect Multi-beam and Lidar data sufficient to produce a complete bathymetric and topographic model of the Brazos River throughout Fort Bend County, Texas.

The project will be to provide support.

2. **Purpose of Test:** To collect, process, and compile the Multi-beam and Lidar data necessary to create a more precise AdH Model and 1D/2D HEC-RAS Models of approximately 92 miles of the Brazos River throughout Fort Bend County, Texas in support of the Fort Bend County Drainage District.

3. **Specialized Technical Support:** Field data collection of shallow and remote rivers such as the Brazos requires specialized vessels, equipment, and SME's.

4. **Scope:** Personnel from the Coastal and Hydraulics Laboratory will collect Multi-beam and Lidar data sufficient to produce a complete bathymetric and topographic model of the Brazos River throughout Fort Bend County, Texas from top of bank to top of bank, using a shallow draft survey vessel outfitted with a Norbit WBMS Multi-beam Sonar and an Applanix PosMV WaveMaster inertial motion unit. This same vessel will also support a Velodyne H-32E Lidar system to collect visible terrestrial data above the water surface along the shoreline of the Brazos up to the visible top bank line. The resultant data will be post-processed by ERDC personnel to produce a .xyz dataset that can be used to update the current H&H models of the Brazos River throughout Fort Bend County.

4.2 Description of Testing.

Task 1	Personnel	Description	Deliverables	Cost
Field Deployment and Data Collection	A. Jackson C. Ellis D. Hickman N. Churchill	Mobilization, Travel, Data Collection and Control Logistics	N/A	\$110,947
Task 2				

Data Processing and Results	M. Dale D. Hickman G. Herring	De-mobilization, Data Management and Editing, Data Processing and Reporting	End User Data Files	\$55,205
Task 3				
Reporting	A. Jackson	Final Report	Report of Survey	\$6,000

5. **Deliverables:** Multi-beam data shall be edited into a 3-foot grid and provided in a .XYZ point file and a .LAS or .LAZ file at the same grid spacing. The water's edge to top of bank data shall be provided in a separate data file and data shall be edited into a 3-foot grid to bare earth and provided in a .XYZ point file and a .LAS or .LAZ point file at the same grid spacing. A report of survey will be submitted in Microsoft WORD format.

6. **Cost Estimate:**

Purchaser will provide funds: \$172,152.00. Payment instructions are included in Article 7 of this agreement. This cost includes itemized costs listed in Section 4.2 as well as mandatory overhead charges.

7. **Period of Performance/Schedule:** Not to exceed 8 Months after signature.

8. **Point of Contact:**

Fort Bend County Drainage District
Jeffrey T. Janecek, P.E., C.F.M.
1124 Blume Road
Rosenberg, TX 77471
Phone: (281) 342-2863
Email: Jeffrey.Janecek@fortbendcountytexas.gov

ERDC-CHL:
Anthony R. Jackson
U.S. Army ERDC
39090 Halls Ferry Road
Vicksburg, MS 39180
Phone: (601) 634-2338
Email: Anthony.R.Jackson@usace.army.mil

Administrative Point of Contact:

Eric L. Fox
U.S. Army ERDC- Geotechnical and Structures Lab
3909 Halls Ferry Road
Vicksburg, MS 39180-6199
Phone: (601) 634-4113
Email: Eric.L.Fox@usace.army.mil
TTO@usace.army.mil