

STATE OF TEXAS §
COUNTY OF FORT BEND §

SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES

(Freese and Nichols, Inc. – Kitty Hollow Lake Dam Repair Project)

THIS SECOND AMENDMENT ("Second Amendment") is entered into by and between Fort Bend County Drainage District ("District"), a special district organized under the laws of the state of Texas, and Freese and Nichols, Inc. ("CONSULTANT"), a Texas corporation. District and CONSULTANT are hereinafter collectively referred to as the "Parties" and each individually a "Party."

WHEREAS, the Parties previously entered into that certain agreement on February 28, 2023 (the "Agreement") for Professional Engineering Services for the Kitty Hollow Lake Dam Repair Project to assist the District in meeting the Texas Commission on Environmental Quality's dam safety requirements; and

WHEREAS, the Agreement was subsequently amended on July 10, 2024 (the "First Amendment") to provide for additional services; and

WHEREAS, the Agreement is not subject to competitive bidding requirements under Section 262.023 of the Texas Local Government Code because the Agreement is for professional engineering services and may not be competitively bid pursuant to Chapter 2254 of the Texas Government Code; and

WHEREAS, by execution of this Second Amendment, the Parties desire to amend the Agreement to provide for additional services by CONSULTANT, to increase the total Maximum Compensation for the completion of such services, and to otherwise ratify and confirm all the terms and conditions as set forth therein.

NOW, THEREFORE, in consideration of the foregoing, the Parties do mutually agree that the Agreement between the Parties is hereby amended as follows:

1. **Scope of Services.** District shall pay CONSULTANT an additional Twenty Seven Thousand Three Hundred Nineteen and 00/100 Dollars (\$27,319.00) for the design of a concrete crest road along the embankment of the Kitty Hollow Dam as provided in the Proposal dated September 30, 2024 attached hereto as Exhibit "A-2" (the "Services") and incorporated by reference for all intents and purposes.
2. **Time for Performance.** Time for performance for the Services under this Second Amendment shall begin with CONSULTANT'S receipt of Notice to Proceed (the "Commencement Date") and shall end no later than four (4) weeks from the

Commencement Date. CONSULTANT shall complete the Services within this time or within such additional time as may be extended by County.

3. **Limit of Appropriation.** CONSULTANT understands and agrees that the Maximum Compensation payable to CONSULTANT for Services rendered under this Agreement is hereby increased to an amount not to exceed Five Hundred Fifty Four Thousand Eight Hundred Seventy Eight and 00/100 Dollars (\$554,878.00) authorized as follows:

\$399,548.00 under the Agreement; and
\$128,011.00 under the First Amendment; and
\$27,319.00 under this Second Amendment.

In no event shall the amount paid by District under this Agreement exceed the Maximum Compensation without a District approved change order. CONSULTANT 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 \$554,878.00 specifically allocated to fully discharge any and all liabilities District may incur under the Agreement.

CONSULTANT does further understand and agree, said understanding and agreement also being of the absolute essence of the Agreement, that the total Maximum Compensation that CONSULTANT may become entitled to and the total maximum sum that District may become liable to pay to CONSULTANT under the Agreement shall not under any conditions, circumstances, or interpretations thereof exceed \$554,878.00.

4. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas law and are included by District regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, CONSULTANT hereby verifies that CONSULTANT and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
 - A. 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.
 - B. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, CONSULTANT 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 § 808.001 of the Texas Government Code.

- C. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, CONSULTANT 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 § 809.001 of the Texas Government Code.
 - D. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, CONSULTANT 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 §2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in §2274.001(6) and (7) of the Texas Government Code.
- 5. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of the Agreement.
 - 6. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, CONSULTANT ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO DISTRICT FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
 - 7. **Modifications and Conflict.** Except as modified herein, the Agreement shall remain in full force and effect and has not been otherwise modified or amended. If there is a conflict among documents that make up the Agreement, this Second Amendment shall prevail with regard to the conflict.

{Execution Page Follows}

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FORT BEND COUNTY DRAINAGE DISTRICT

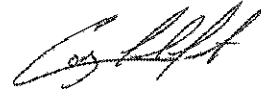
KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

FREESE AND NICHOLS, INC.



Authorized Agent – Signature

Cody Cockroft

Authorized Agent- Printed Name

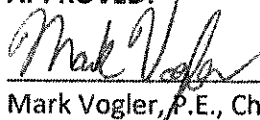
Vice President

Title

12/06/2024

Date

APPROVED:



Mark Vogler, P.E., Chief Engineer

AUDITOR'S CERTIFICATE

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

Robert E. Sturdivant, County Auditor

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EXHIBIT A-2

(Scope of Work Follows Behind)



PROFESSIONAL SERVICES AGREEMENT

AMENDMENT #2

FORT BEND COUNTY DRAINAGE DISTRICT, TX

FNI Project:

FBD23284

1124 Blume Road

Client Contract:

P.O. NUMBER: 223889

Rosenberg, TX 77471

Date:

9/30/2024

Project Name:	Kitty Hollow Dam Improvements
Description of Services:	Engineering Services
Deliverables:	Updates to Issued for Bid Construction Drawings, Specifications, and Opinion of Probable Construction Cost (OPCC)
Schedule:	4 weeks
Compensation Type:	Lump Sum Fee
Current Contract Amount:	\$527,559.00
Amount of this Amendment:	\$27,319.00
Revised Total Amount Authorized:	\$554,878.00

The services described above shall proceed as amended upon execution of this Amendment. All other provisions, terms, and conditions of the Professional Services Agreement which are not expressly amended shall remain in full force and effect. The services are detailed in attachment SC.

FORT BEND COUNTY DRAINAGE DISTRICT, TX

FREESE AND NICHOLS, INC.

By: _____

By:  _____

Name: _____

Name: Cody Cockroft

Title: _____

Title: Vice President

Date: _____

Date: 9/30/2024

ATTACHMENT A

KITTY HOLLOW DAM IMPROVEMENTS PROJECT SCOPE OF SERVICES FOR CONCRETE CREST ROAD

ARTICLE I

PROJECT DESCRIPTION: Subsequent to a meeting with Commissioner Prestage on September 6, 2024, Fort Bend County Drainage District (FBCDD - **Owner**) has requested Freese and Nichols, Inc. (FNI - **Engineer**) to include a design for a concrete crest road to be added to the embankment raise at the Kitty Hollow Dam (**Project** - Contract Number: 23-Dmg-100511; P.O. Number: 223889).

The following assumptions were made in development of the scope and fee for the additional design of a concrete crest road; henceforth mentioned as the crest road:

- Owner will elicit Engineer to provide detail sheets, specifications, and Opinion of Probable Construction Cost (OPCC) for the installation of the crest road.
- The details of the concrete crest road will be provided by AIG. FNI will make the changes necessary to the construction drawings and specifications to implement the crest road.
- FNI will coordinate with the Texas Commission on Environmental Quality (TCEQ) with the updates.
- FNI will coordinate with AKV Consultants, LLC (AKV) on items related to schedule and tie-ins for other portion(s) of the project being developed.
- FNI's preliminary design of the crest road:
 - Centered and located on top of the embankment improvements, spanning approximately 12,500 linear feet (2.4 miles).
 - The crest road will be designed with the dimensions to-be-determined by the Owner and will consider heavier traffic (maintenance and emergency vehicles).
 - Ensure design is Americans with Disabilities Act (ADA) compliant. Submit plans to a registered accessibility specialist (RAS) for project submission to TDLR, plan review, inspection and State filing fees.
- One (1) site visit to verify design and potential implications.
- One (1) site visit during the construction phase of the project for general observances.
- No additional surveying, environmental, or geotechnical services will be completed.

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project upon execution of this Agreement.

A. TASK 1: PROJECT MANAGEMENT

1. Coordination with Owner and AKV to discuss schedule and design of the concrete crest road to be implemented into the Project (up to two (2) phone discussions).
2. Coordination with the Texas Department of Licensing and Regulation (TDLR)
3. Upon Completion, coordination of the updated design with TCEQ.
4. Perform routine project management activities, including:
 - a. Implementation of Quality Control (QC) and Quality Assurance (QA) measures throughout the project.
 - b. Status Reporting / Monthly invoicing
 - c. Develop, manage, monitor, update, and coordinate the baseline schedule throughout the life of the project based on changes or necessary updates.

B. TASK 2: CREST ROAD DESIGN

1. Complete one (1) site visit to verify design and potential implications.
2. Based on the information contained in the completed drawings, specifications, Construction Contract Documents, designs, and layouts of the improvements to be constructed, prepare revisions of the following documents
 - a. Construction Drawings
 - b. Specifications
 - c. Construction Contract Documents
 - d. Opinion of Probable Construction Cost (OPCC)
3. Furnish Owner preliminary documents in electronic format (.PDF) of the updated documents (Construction drawings, Specifications, Construction Contract Documents, OPCC) for review.
4. Upon incorporation of Owner review comments, finalized documents (Construction drawings, Specifications, Construction Contract Documents, OPCC) will be furnished.

ARTICLE II

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the following schedule: 4 weeks for Basic Services.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Owner or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

ARTICLE III

RESPONSIBILITIES OF Owner: Owner shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Owner recognizes and expects that change orders may be required to be issued during construction. The responsibility for the costs of change orders will be determined on the basis of applicable contractual obligations and professional liability standards. FNI will not be responsible for any change order costs due to unforeseen site conditions, changes made by or due to the Client or Contractor, or any change order costs not caused by the negligent errors or omissions of FNI. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, FNI is liable for change order costs. It is recommended that the Client budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.
- B. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to FNI's services for the Project.
- C. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Owner deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- D. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- E. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Client may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Client may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Client may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- F. Give prompt written notice to FNI whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- G. Bear all costs incident to compliance with the requirements of this Article III.

ARTICLE IV

DESIGNATED REPRESENTATIVES: FNI and Owner designate the following representatives:

Owner's Designated Representative – Jeffrey T. Janecek; 1124 Blume Road, Rosenberg, TX 77471, Office 281-342-2863, Jeffrey.Janecek@fortbendcountytexas.gov.

Owner's Accounting Representative – Wendy DeLeon, 1124 Blume Road, Rosenberg, TX 77471, Office 281-342-2863, Wendy.DeLeon@fortbendcountytexas.gov.

FNI's Designated Representative – Frederic Ma; 10497 Town and Country Way, Suite 500, Houston, TX 77024, Office: 716-600-6848, Fred.Ma@freese.com.

FNI's Accounting Representative – Jennifer Shaw; 10497 Town and Country Way, Suite 600, Houston, TX 77024, Office: 832-303-7446, jennifer.shaw@freese.com.

ATTACHMENT B
COMPENSATION SCHEDULE

**KITTY HOLLOW DAM IMPROVEMENTS PROJECT - ADDITIONAL ENGINEERING
SERVICES FOR CONCRETE PAVED CREST ROAD**

BASIC SERVICES	
A. Project Management	\$9,813
B. Crest Road Design	\$17,506
Basic Services Total	\$27,319