

STATE OF TEXAS

COUNTY OF FORT BEND

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KNOW ALL MEN BY THESE PRESENTS:

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT is made and entered into by and between Fort Bend County Drainage District, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as "District," and FREESE & NICHOLS, INC., hereinafter referred to as "Contractor," authorized to conduct business in the State of Texas.

WITNESSETH:

WHEREAS, District desires that Contractor provide professional engineering services for repair of the Big Creek Bypass Structure located in Fort Bend County, Texas, hereinafter referred to as the "Project;" and

WHEREAS, Contractor represents that it is qualified and desires to perform such services; and

WHEREAS, District has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, LOCAL GOVERNMENT CODE; and

NOW, THEREFORE, District and Contractor, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I
SCOPE OF AGREEMENT**

- 1.01 Contractor shall provide the services described in Exhibit A, Contractor's Proposal, attached hereto and incorporated by reference as if set forth herein verbatim for all purposes.
- 1.02 Contractor agrees to complete the services called for in Exhibit A within 180 days from the date of Notice to Proceed.

**SECTION II
CONTRACTOR'S COMPENSATION**

- 2.01 For and in consideration of the services rendered by the Contractor, and subject to the limit of appropriation under Section VI, District shall pay to Contractor an amount not to exceed \$169,000.00, including reimbursable expenses, if any.
- 2.02 Contractor shall submit invoices to District and District shall pay each invoice within thirty (30) days after the District Project Manager's written approval provided however, that the approval or payment of any invoice shall not be considered to be conclusive evidence of performance by Contractor to the point indicated by such invoice or of receipt or acceptance by District of the services covered by such invoice.
- 2.03 Contractor's rates shall not exceed those as provided in Exhibit A.

- 2.04 Reimbursable expenses shall be reimbursed to Contractor at-cost upon submission of properly submitted expense records to District. Service charges are not applicable and not subject to reimbursement.

SECTION III TERMINATION

- 3.01 District may terminate this Agreement at any time by providing ten (10) days written notice to Contractor.
- 3.02 Upon receipt of such notice, Contractor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 3.03 Within thirty (30) days after receipt of notice of termination, Contractor shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.
- 3.04 District shall then pay Contractor that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.
- 3.05 Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to District when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

SECTION IV INSURANCE

- 4.01 During the period of this Agreement, Contractor shall maintain, at its expense, insurance with limits no less than those prescribed below with a carrier having a rating with A.M. Best & Co of A-VII or better:
- A. General Liability (including Contractual Liability):
 - Bodily Injury and Property Damage \$1,000,000.00
 - Aggregate \$2,000,000.00
 - B. Automobile Liability:
 - Bodily Injury and Property Damage \$1,000,000.00
 - Limit per Occurrence
 - C. Worker's Compensations Statutory \$1,000,000.00
 - Limit Employer's Liability
 - D. Professional Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.
- 4.02 With respect to the required insurances listed in Section 4.01, Contractor shall, if allowed by law and the insurance carrier:
- A. Name Fort Bend County as additional insured as their interests may appear, with the exception of worker's compensation insurance and professional liability insurance;

- B. Provide County a waiver of subrogation regarding Contractor's worker's compensation insurance;
 - C. Provide County with a thirty (30) day advance written notice of cancellation or material change to said insurance; and,
 - D. Provide County with Certificates of Insurance evidencing required coverages upon acceptance of this Agreement by Commissioners Court.
- 4.03 The policies specified in Section 4.01(A-C) shall name Fort Bend County as an additional insured. Furthermore, the Workers' Compensation and Liability Insurance carriers shall grant a waiver of subrogation in Fort Bend County's favor.
- 4.04 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement 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 Agreement is completed.
- 4.04 Contractor shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- 4.05 Approval of the insurance by County shall not relieve or decrease the liability of the Contractor.

SECTION V NOTICE

- 5.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to District or Contractor at the addresses set forth below.
- 5.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 5.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to Contractor:
Project Manager:

Freese & Nichols, Inc.
Cody Cockroft
3100 Wilcrest Drive
Suite 200
Houston, Texas 77042

B. If to District notice must be sent to both District's Purchasing Agent and District Project Manager:

Fort Bend County Purchasing Department
Gilbert D. Jalomo, Jr., CPPB
4520 Reading Road, Suite A

Rosenberg, Texas 77471

Mark Vogler, PE
Fort Bend County Drainage District
P.O. Box 1028
Rosenberg, Texas 77471

- 5.04 Either party may designate a different address by giving the other party ten (10) days written notice.

SECTION VI LIMIT OF APPROPRIATION

- 6.01 Prior to the execution of this Agreement, Contractor has been advised by District, and Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that District shall have available the total maximum sum of \$169,000.00, specifically allocated to fully discharge any and all liabilities which may be incurred by District.
- 6.02 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that Contractor may become entitled to hereunder and the total maximum sum that District shall become liable to pay to Contractor hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$169,000.00.

SECTION VII SUCCESSORS AND ASSIGNS

- 7.01 District and Contractor 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 such other party, in respect to all covenants of this Agreement.
- 7.02 Neither District nor Contractor shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.
- 7.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

SECTION VIII PUBLIC CONTACT

- 8.01 Contact with the any media outlet, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of District.
- 8.02 Under no circumstances, whatsoever, shall Contractor release any material or information developed or received in the performance of its services hereunder without the express written permission of District, except where required to do so by law.

SECTION IX COMPLIANCE AND STANDARDS

Contractor shall render the services hereunder in accordance with generally accepted standards of Contractors practicing in Fort Bend County, Texas applicable thereto and shall use that

customary degree of care and skill commensurate with the profession similar to the Project to comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services to be rendered hereunder, and Contractor's performance.

SECTION X OWNERSHIP OF DOCUMENTS

- 10.01 District shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement by the Contractor and his Contractors (deliverables).
- 10.02 No reuse fees or royalty payments will be paid to the Contractor in connection with future reuse or adaptation of designs derived under this contract.
- 10.03 Copies of all complete or partially completed mylar reproducible, preliminary layouts, record drawings, digital files, sketches and other documents prepared pursuant to this Agreement shall be delivered to District when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first, as provided in this Agreement.
- 10.04 Contractor is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, or from duplicating the appearance of the Project depicted in the deliverables for any without the prior express written permission of District.
- 10.05 The documents referenced in this Section are not intended or presented by the Contractor to be suitable for reuse by District or others on extensions of this Project or on other unrelated projects.
- 10.06 Any adaptation or use by District of such documents on extension of this Project or other unrelated projects shall be at District's sole risk.

SECTION XI INDEMNIFICATION

- 11.01 CONTRACTOR SHALL SAVE HARMLESS DISTRICT FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, BUT ONLY TO THE EXTENT OR DEGREE ON A COMPARATIVE BASIS OF FAULT ARISING FROM ACTIVITIES OF THE CONTRACTOR, ITS AGENTS, CONTRACTORS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.
- 11.02 CONTRACTOR SHALL ALSO SAVE HARMLESS DISTRICT FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY DISTRICT, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES THAT MIGHT BE IMPOSED ON DISTRICT AS THE RESULT OF SUCH NEGLIGENT ACTIVITIES BY THE CONTRACTOR, ITS AGENTS, CONTRACTORS OR EMPLOYEES.

SECTION XII MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XIII MISCELLANEOUS

- 13.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 13.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 13.03 Contractor agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; Contractor and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 13.04 If there is a conflict between this Agreement and Exhibit A, the provisions of this Agreement shall prevail.

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SECTION XIV
EXECUTION

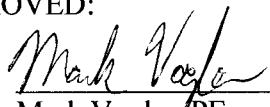
This Agreement shall become effective upon execution by District.

FORT BEND COUNTY DRAINAGE DISTRICT:


Robert E. Hebert, County Judge

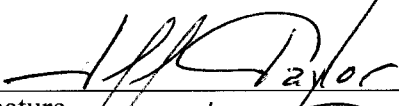
April 12, 2011
Date

APPROVED:

By: 
Mark Vogler, PE
Fort Bend County Drainage District

4/5/11
Date

CONTRACTOR: FREESE & NICHOLS, INC.


Signature
Printed Name: Jeff Taylor
Title: Vice President

4/4/11
Date

PJS:Freese & Nichols.Big Creek.PSA.Drainage District.3523

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$169,000.00 to accomplish and pay the obligation of the District under this contract.

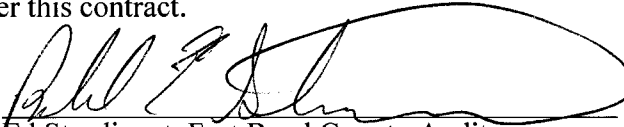

Ed Sturdivant, Fort Bend County Auditor

Exhibit A: Contractor Proposal

Exhibit A

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER

In response and subsequent to our discussion, we are pleased to submit this agreement for providing professional engineering services to Fort Bend County Drainage District regarding the Big Creek Drop Inlet structure.

The scope of services which follows is focused on Phase II of a possibly multi-phased project meant to assist the Fort Bend County Drainage District in safeguarding the structure against additional movement that could negatively affect the structural, hydraulic, and operational effectiveness of the structure. Freese and Nichols, Inc. (FNI) will utilize our technical staff with proven experience with these types of solutions and structures in performing our services.

In the event that the District requests additional services, FNI will provide a scope and fee for professional services to accommodate the District's needs. These services (Phase III) would include construction representation, construction inspections, and construction management.

The following services are exclusive to Phase II.

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ARTICLE I

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

Task 1: Project Management

Establish and manage the project schedule and budget and coordinate information between FNI and the Fort Bend County Drainage District. Coordinate Quality Control (QC) and Quality Assurance (QA) by Senior Management and Technical Staff consistent with FNI's established internal quality review processes. Coordinate conference calls and meetings for internal and external use. Provide Fort Bend County Drainage District monthly reports pertaining to the progress of the project. This will generally include scheduled milestones, project updates, action items, etc. Participate and manage FNI submittals to the Fort Bend County Drainage District and the District's comments and responses to the submittals to the FNI design team. Manage any and all subconsultants.

Task 2: Design Charrette (Pre-design Concept Meeting)

FNI discipline leaders will meet with Fort Bend County Drainage District for a one day workshop to discuss and determine various alternatives for the layout of the stilling basin, headwalls, slope protections, etc. At the conclusion of the meeting, at least two conceptual (preliminary) design alternatives will be identified. Fort Bend County Drainage District will provide for a site visit for FNI discipline leaders prior to this design meeting (see task 3 for more information).

An alternative concept for the Big Creek Drop Inlet Structure will be presented at the Design Charrette. For more information on these concept drawings, please refer to Task 4, Option B.

Task 2a: Interim Technical Memorandum

Freese and Nichols will provide Fort Bend County Drainage District an interim technical memorandum containing an alternative to construct a new structure at a new location. A conceptual plan and profile will be included, as well as a preliminary Opinion of Probable Construction Cost.

Additionally, FNI will provide additional information for Alternative A that summarizes design and rehabilitation concepts that were discussed during the Design Charrette. A revised Opinion of Probable Construction Cost will be provided for Alternative A.

Task 3: Site Visits and Meetings during Design Charrette and Design Report

FNI anticipates conducting the following site visits before and during design phase services:

- Site Visits
 - Project Manager and Senior Water Resource Design Engineer prior to Design Charrette
 - Mobilization of the exploratory driller (FNI PM and FNI logger). FNI logger will remain in the field throughout the duration of the boring operation.
 - FNI PM will meet with surveying field crew one time, in the field.
- Meetings
 - Design Charrette (with FBCDD)
 - Internal Project Meetings
 - Subsequent to Submittal of Design Report (with FBCDD)
 - Scoping Meeting for Design Phase Services (with FBCDD)

Task 4: Design Report and Preliminary Drawings (30%)

Option A: Currently, FNI anticipates that the Fort Bend County Drainage District desires a detailed design similar to Alternative #3 of the FNI report titled, "Big Creek Bypass Drop Inlet Structure" dated September 29, 2010. However, as noted in the report, Alternative #3 was intended to focus only on the spillway of the structure, not the overall functionality of the structure. Based on recent conversations with the Fort Bend

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County Drainage District, the District desires FNI to prepare a design report which will encompass a preliminary design approach to provide overall integrity of the structure.

FNI will prepare a Design Report which will document the discussions and the outcome of the Design Charrette. The Design Report will also provide Fort Bend County Drainage District preliminary design, recommendations, and opinions of probable construction costs for the design improvements of the Big Creek Drop Inlet Structure. The primary purpose of the Design Report is to provide the District with options for their structure that will satisfy long-term hydraulic, structural, geotechnical, and operational benefit to their investment. This will include:

- Hydraulic analysis from the structure to the Brazos River. This analysis will impact the design of the stilling basin, headwall improvements, intake structure, discharge conduits and erosion control features.
- Stilling basin
 - Training walls and drainage system
 - Underdrain system
- Erosion control features downstream of the spillway
- Conduits
 - Partial replacement, reinforcement and/or lining of existing segmental culvert sections
- Headwall improvements and reinforcement
 - Addition of splitter walls, material/operational/equipment upgrades to enhance gate operation manageability;
 - Drainage features upstream of the headwall to tie into the training walls and underdrain system of the stilling basin and sidewalls.
- Intake structure
 - Review and discuss alternatives for improving the hydraulic efficiency and even distribution of flows. This will include possibly revising the configuration of the intake structures and designing new trash racks.
- Slope protection
 - Drainage system to tie into the drainage system associated with the training walls
 - Slope protection design

Option B: Due to the potential ratio in costs (rehabilitation of existing structure to the original cost of the structure); FNI seeks to discuss at least one additional option for the replacement of the existing Big Creek Drop Inlet Structure. Time has been budgeted to prepare for this option, and its discussion, as part of the Design Charrette. FNI will verify that this option would comply with the project's existing permit, or FNI will recommend deviation(s), as appropriate, based on the preliminary recommendations of the alternative approach.

For the alternative design (Option B), FNI will provide a conceptual level layout which would replace the segmented conduit and drop structure with a new in-channel drop chute structure. FNI anticipates that at least 50% of the existing box culverts would be considered salvageable and would be used for the new structure. It is likely that gates would still need to be used to comply with the permit. FNI will provide for an analysis of a possible solution to the backwater issue of the Brazos River; whether this solution is the utilization of the existing flap gates or other options. Based on the head requirements necessary to operate the gates, FNI will provide a viable gate option that would work with the alternative design. If no gate alternative is available, FNI will discuss other options, as appropriate.

Due to the importance of access from one side of the channel to the other, FNI will provide design concepts

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for a potential bridging structure to accommodate this need. This bridging structure may be a part of the alternative structure, or may be a separate structure to itself.

For Option B, FNI will provide a concept set of drawings consisting of a conceptual plan and profile. The drawings will be included in the interim technical memorandum (see Task 2a, above). Three hardcopies and one electronic copy of the memorandum will be provided within 5 weeks of Notice to Proceed.

Deliverables: Three bound hardcopies and one electronic copy (.pdf) of the draft Design Report will be provided to Fort Bend County Drainage District's Point of Contact within three (3) months of Notice to Proceed. A draft copy of the geotechnical report will be included in advance. Fort Bend County Drainage District will provide FNI comments to the report within three (3) weeks of receipt of draft report. FNI project leaders will meet with Fort Bend County Drainage District within one (1) week of receiving the District's comments. FNI will amend the report based on the District's comments and will provide five (5) hardcopies and one (1) electronic copy of the final Design Report within three weeks of the Design Report meeting.

Independent to the Design Report, FNI will prepare a 30% preliminary set of construction drawings for the Option of Choice Alternative. These drawings will likely consist of a recommended plan, typical cross sections, revised profile, recommended gate alternatives (if applicable), limits of the drainage system, etc. Three sets of full sized drawings (22' x 34") and three sets of half sized drawings (11" x 17") will be provided. A single electronic copy (.pdf) will be provided by compact disk or thumb drive. The drawings will be provided to the District, concurrently with the Draft Design Report.

Task 5: Geotechnical

FNI will subcontract portions of the geotechnical work to Fugro Consultants. This will primarily involve the drilling of the borings and the laboratory analysis. FNI will provide a logger for samples taken in the field. FNI will use the information from Task 6 below, during the preliminary stages of the design effort, as well as for final design.

The FNI geotechnical engineer will work closely with the other FNI engineering disciplines during the preliminary stages of this project, as well as during final design stages of the project.

Task 6: Geotechnical Subconsultant – Borings and Laboratory Testing

Fugro will provide a drilling rig and drilling operators and will provide for a laboratory analysis of the soils taken in the field for this project. Their scope will include drilling three borings (one each side of the embankment at 60 feet deep, and one in the bottom of the channel downstream of the structure at 40 feet deep). A sample of the data that will be taken and the analysis to be performed is as follows:

- Atterberg limits, groundwater, soil characteristics, etc.
- Undrained strength tests (unconsolidated-undrained triaxial compression tests and unconfined compression tests)
- Drained shear strength (multi stage consolidated-undrained triaxial compressions)
- Compression
- Show boring log with soil descriptions
- Depth of groundwater
- FNI will provide a field representative to oversee the drilling operations and to take samples, as appropriate.

FNI and Fugro will likely request that the District construct a soil crossing immediately downstream of the stilling basin in order to provide access of the drilling rig to the channel bottom.

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Task 7: Surveying

FNI will coordinate with Fort Bend County Drainage District concerning all surveying needs. Fort Bend County Drainage District will supply the labor to perform the surveys and will provide the data to FNI.

Task 8: Detailed Design Phase Services

Not included in this scope; however, based on the results of the Design Charrette and Fort Bend County Drainage District's review of the Design Report and desired course of action, FNI will move forward with scoping out the professional services associated with the preparation of construction plans and specifications for the improvements to the Big Creek Drop Inlet Structure.

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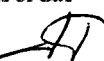
ARTICLE II

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by OWNER, which are not included in the above described basic services, are described as follows:

- A. Field surveying required for the preparation of designs and drawings.
- B. Field layouts or the furnishing of construction line and grade surveys.
- C. GIS mapping services or assistance with these services.
- D. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
- E. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by OWNER or 2) due to other causes not solely within the control of FNI.
- F. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by OWNER.
- G. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- H. Preparing data and reports for assistance to OWNER in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- I. Assisting OWNER in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- J. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- K. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- L. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- M. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- N. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- O. Providing services after the completion of the construction phase not specifically listed in Article I.
- P. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.

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- Q. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.
- R. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- S. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- T. Provide follow-up professional services during Contractor's warranty period.
- U. Provide Geotechnical field investigations, sampling, laboratory testing instrument installation not specified in Article I.

ARTICLE III

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:

Commence Phase II work on Official Notice to Proceed (NTP) by Fort Bend County Drainage District.

- Interim Technical Memorandum will be provided to Fort Bend County Drainage District within 5 weeks of NTP.
- Draft Design Report and 30% construction drawings will be provided within 3 months of NTP
- Final Design Report will be provided within 3 weeks subsequent to the FNI and Fort Bend County Drainage District Meeting review meeting of the Draft Design Report (for more information – see Task 4).

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 IV

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 certain Change Orders may be required. Unless noted otherwise, the Owner shall budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.

Further, Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omission, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees to pay for Change Orders and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the aggregate costs of all such approved Covered Change Orders exceed 2% for new construction and 4% for reconstruction. Any

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responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include:

- any costs that Owner would have incurred if the Covered Change Order work had been included originally in the Contract Documents and without any other error or omission of Engineer related thereto,
- Any costs that are due to unforeseen site conditions, or
- Any costs that are due to changes made by the Owner.
- Any costs that are due to the Contractor

Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percent of Construction Cost stated above or for any other Change Order. Wherever used in this document, the term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineers Consultants.

- 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. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this AGREEMENT.
- F. 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.
- G. 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.
- H. OWNER shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. OWNER shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by OWNER.
- I. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER 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 OWNER 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 OWNER 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.

L:\Resources\cbs\F\FortBend Cty Drain\Big Creek Diversion\PrimeAgree

SC-8

FNI
OWNER 

- J. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this AGREEMENT or other services as required.
- K. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and OWNER designate the following representatives:

- Owner's Designated Representative - Mr. Mark Vogler, PE, CFM, Fort Bend County Drainage District, 1004 Blume Rd., Rosenberg, TX 77471, 281-342-2863 phone, 281-342-9130 fax, voglemar@co.fort-bend.tx.us.
- Owner's Accounting Representative - Mr. Mark Vogler, PE, CFM, Fort Bend County Drainage District, 1004 Blume Rd., Rosenberg, TX 77471, 281-342-2863 phone, 281-342-9130 fax, voglemar@co.fort-bend.tx.us.
- Freese and Nichols' Project Manager - Cody Cockroft, 3100 Wilcrest Drive, Suite 200, Houston, Texas 77042, 713-600-6832 phone, 713-600-6801 fax, cmc@freese.com.
- Freese and Nichols' Accounting Representative - Judy Blair, 11200 Broadway Street, Suite 2332, Pearland, Texas 77584, 832-456-4711 phone, 832-456-4701 fax, jfb@freese.com.

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SC-9

FNI
OWNER



**COMPENSATION
LUMP SUM WITH ADDITIONAL WORK BASED ON COST TIMES MULTIPLIER**

- A. **Basic Services:** Compensation to FNI for the Basic Services in Attachment SC shall be the lump sum of One Hundred Sixty-Nine Thousand Dollars \$169,000. If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

B. **Schedule of Charges for Additional Work:**

Staff Member

Salary Cost Times Multiplier of 2.21

Resident Representative

Salary Cost Times Multiplier of 2.0

Salary Cost is defined as the cost of payroll of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc., for the time directly chargeable to the project, plus social security contributions, unemployment compensation insurance, retirement benefits, medical and insurance benefits, longevity payments, sick leave, vacation and holiday pay applicable thereto. (Salary Cost is equal to 1.632 times payroll. This factor is adjusted annually).

Other Direct Expenses

Actual Cost Times Multiplier of 1.15

Other direct expenses shall include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

Rates for In-house Services

Computer

\$10.00 per hour

Printing

Black and White

\$0.10 per copy

Plotter

Bond \$ 2.50 per plot

Special \$ 5.00 per plot

Color \$ 5.75 per plot

Color

\$0.50 per copy

Binding

\$5.75 per book

Testing Apparatus

Density Meter \$700.00 per month

Gas Detection \$ 20.00 per test

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/4/2011

PRODUCER Phone: 817-820-8144 Fax: 817-870-0310
HUB International Rigg
777 Main St, C-50
Fort Worth TX 76102

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Freese and Nichols, Inc.
4055 International Plz #200
Fort Worth TX 76109

INSURERS AFFORDING COVERAGE**NAIC #**

INSURER A: HARTFORD CAS INS CO

29424

INSURER B: HARTFORD ACCID & IND CO

22357

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	46UUNNW0133	10/23/2010	10/23/2011	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	X	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	46UUNNW0133	10/23/2010	10/23/2011	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A	X	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	46XHULO9889	10/23/2010	10/23/2011	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	46WBZH7407	10/23/2010	10/23/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Repair of the Big Creek Bypass Structure
The District and its employees, officers, officials, agents, and volunteers are listed as additional insureds under the Blanket Additional Insured Endorsement for General Liability and Auto with a Blanket Waiver of Subrogation on the General Liability, Auto and Workers Compensation. Compensation per terms and conditions of policy and per written contract.

CERTIFICATE HOLDER

Fort Bend County Drainage District
4520 Reading Road, Suite A
Rosenberg TX 77471

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/4/2011

PRODUCER Phone: 817-820-8144 Fax: 817-870-0310
HUB International Rigg
777 Main St, C-50
Fort Worth TX 76102

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE**NAIC #**

INSURED
Freese and Nichols, Inc.
4055 International Plz #200
Fort Worth TX 76109

INSURER A: Continental Casualty Company 20443

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	OTHER Professional Claims Made	AEH008214422	12/30/2010	12/30/2011	\$5,000,000 Per Claim \$10,000,000 Aggregate Retro Date 11/1/1965

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Repair of the Big Creek Bypass Structure

CERTIFICATE HOLDER

Fort Bend County Drainage District
4520 Reading Road, Suite A
Rosenberg TX 77471

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Request for Taxpayer Identification Number and Certification

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Freese and Nichols, Inc.

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☒ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶
☐ Other (see instructions) ▶

☐ Exempt
payee

Address (number, street, and apt. or suite no.)

4055 International Plaza, Suite 200

City, state, and ZIP code

Fort Worth, TX 76109-4895

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

or

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign
Here

Signature of
U.S. person ▶

Gwen Green Ry

Date ▶ *1-22-11*

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7 ²

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹ The minor ²
3. Custodian account of a minor (Uniform Gift to Minors Act)	
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ³
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ⁴
5. Sole proprietorship or disregarded entity owned by an individual	The owner ⁵
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁶
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

ACORD_{TM} CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 4/4/2011
PRODUCER Phone: 817-820-8144 Fax: 817-870-0310 HUB International Rigg 777 Main St, C-50 Fort Worth TX 76102		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Freese and Nichols, Inc. 4055 International Plz #200 Fort Worth TX 76109		
		INSURERS AFFORDING COVERAGE
		NAIC #
		INSURER A: HARTFORD CAS INS CO 29424
		INSURER B: HARTFORD ACCID & IND CO 22357
		INSURER C:
		INSURER D:
		INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	46UUNNW0133	10/23/2010	10/23/2011	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	X	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	46UUNNW0133	10/23/2010	10/23/2011	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A	X	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	46XHULO9889	10/23/2010	10/23/2011	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	46WBZH7407	10/23/2010	10/23/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Repair of the Big Creek Bypass Structure
 The District and its employees, officers, officials, agents, and volunteers are listed as additional insureds under the Blanket Additional Insured Endorsement for General Liability and Auto with a Blanket Waiver of Subrogation on the General Liability, Auto and Workers Compensation. Compensation per terms and conditions of policy and per written contract.

CERTIFICATE HOLDER

Fort Bend County Drainage District
 4520 Reading Road, Suite A
 Rosenberg TX 77471

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORDTM CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/4/2011

PRODUCER Phone: 817-820-8144 Fax: 817-870-0310
HUB International Rigg
777 Main St, C-50
Fort Worth TX 76102

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Freese and Nichols, Inc.
4055 International Plz #200
Fort Worth TX 76109

INSURERS AFFORDING COVERAGE**NAIC #**

INSURER A: Continental Casualty Company 20443

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

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INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	OTHER Professional Claims Made	AEH008214422	12/30/2010	12/30/2011	\$5,000,000 \$10,000,000 Retro Date Per Claim Aggregate 11/1/1965

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Repair of the Big Creek Bypass Structure

CERTIFICATE HOLDER

Fort Bend County Drainage District
4520 Reading Road, Suite A
Rosenberg TX 77471

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