

**AGREEMENT FOR ENGINEERING SERVICES
BETWEEN THE
CITY OF NORTH RICHLAND HILLS
AND
FREESE AND NICHOLS, INC.**

I.

This Agreement is executed by and between the City of North Richland Hills, a municipal corporation located in Tarrant County, Texas, acting by and through Mark Hindman, its duly authorized City Manager (hereinafter called "CITY"), and **FREESE AND NICHOLS, INC.**, a Texas corporation, acting by and through **SCOTT K. HUBLEY, P.E., CFM**; its duly authorized Principal (hereinafter called "ENGINEER").

WITNESSETH, that CITY desires professional engineering services in connection with the **MACKEY CREEK FLOOD STUDY**

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

II. PROJECT

In this Agreement, the "PROJECT" means the engineering design of the **MACKEY CREEK FLOOD STUDY** in accordance with the Public Works Design Manual, applicable CITY codes, regulations and standards.

III. BASIC AGREEMENT

ENGINEER is an independent contractor and undertakes and agrees to perform professional engineering services in connection with the PROJECT, as stated in the sections to follow. It is understood and agreed that ENGINEER is not and will not by virtue of this contract be deemed to be an agent or employee of CITY and that CITY will not be entitled to direct the performance by ENGINEER's employees or subcontractors of the tasks contemplated by this contract. All engineering services shall be performed with diligence and in accordance with professional standards customarily obtained for such services in the State of Texas. For rendering such services CITY agrees to pay ENGINEER as set forth in Section VIII: "Compensation" and Exhibit F: "Compensation".

IV. SCOPE OF ENGINEER'S SERVICES

ENGINEER shall render the professional services necessary for development of the PROJECT, in accordance with the schedule in Exhibit A: "Project Schedule" and as detailed in Exhibit B: "Basic Engineering Services", said exhibits being attached hereto and incorporated herein for all purposes. ENGINEER shall be responsible, to the level of competency presently maintained by other practicing professional engineers in the same type of work in the Dallas/Fort Worth Metroplex area, for professional and technical soundness, accuracy, and adequacy of all designs, drawings, specifications, and other work and materials furnished under this Agreement.

V. SPECIAL ENGINEERING SERVICES

The CITY will pay the ENGINEER for Special Engineering Services as indicated in Exhibit C: "Special Engineering Services", attached hereto and made a part of this Agreement.

VI. ADDITIONAL ENGINEERING SERVICES

Additional Engineering Services are defined in Exhibit D: "Additional Engineering Services", attached hereto and made a part of this Agreement. No Additional Engineering Services are authorized unless authorization for specified additional services are provided to ENGINEER by CITY in writing and approved by CITY.

VII. SCOPE OF CITY SERVICES

The City will furnish items and perform those services as identified in Exhibit E: "Services to be provided by the City", attached hereto and made a part of this Agreement.

VIII. COMPENSATION

- A. In consideration of the services described herein, CITY shall pay and ENGINEER shall receive compensation in accordance with Exhibit F: "Compensation".
- B. Total payments including without limitation reimbursable expenses, to ENGINEER by CITY for the services stated in Section IV and Section V above shall not exceed **One Hundred Thousand Four Hundred Thirteen Dollars (\$100,413)**.

- C. CITY may authorize additional services to be provided by ENGINEER as mutually agreed upon by the parties. Any authorization for additional services shall be given to ENGINEER by CITY in writing and approved by CITY.
- D. CITY and ENGINEER understand that the variables in ENGINEER's cost of performance may fluctuate. The parties agree that any fluctuation in ENGINEER's costs will in no way alter ENGINEER's obligations under this Agreement nor excuse performance or delay on ENGINEER's part.

IX. OWNERSHIP OF DOCUMENTS

All completed or partially completed evaluations, reports, surveys, designs, drawings and specifications prepared or developed by ENGINEER under this Agreement, including any original drawings, computer disks, mylars or blue lines, shall become the property of CITY when the Agreement is concluded or terminated, and may be used by CITY in any manner it desires; provided, however, that ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described in this Agreement.

X. INDEMNITY

ENGINEER AND ITS SUBCONSULTANTS SHALL INDEMNIFY AND HOLD CITY AND ALL OF ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES HARMLESS FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSES, ON ACCOUNT OF DAMAGE TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ANY AND ALL PERSONS, INCLUDING BUT NOT LIMITED TO OFFICERS, AGENTS OR EMPLOYEES OF ENGINEER OR ITS SUBCONSULTANTS, AND ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK AND IMPROVEMENTS, WHICH MAY ARISE OUT OF ANY NEGLIGENT ACT, ERROR, OR OMISSION IN THE PERFORMANCE OF ENGINEER'S PROFESSIONAL SERVICES OR IN THE PREPARATION OF EVALUATIONS, REPORTS, SURVEYS, DESIGNS, WORKING DRAWINGS, SPECIFICATIONS AND OTHER ENGINEERING DOCUMENTS INCORPORATED INTO ANY IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH; ENGINEER SHALL DEFEND AT ITS OWN EXPENSE ANY SUITS OR OTHER PROCEEDINGS BROUGHT AGAINST CITY AND ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES OR ANY OF THEM ON ACCOUNT OF THE FOREGOING DESCRIBED NEGLIGENT ACTS, ERRORS OR OMISSIONS, AND SHALL PAY ALL EXPENSES AND SATISFY ALL JUDGMENTS WHICH MAYBE INCURRED BY OR RENDERED AGAINST CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES OR ANY OF THEM, IN CONNECTION WITH THE FOREGOING DESCRIBED NEGLIGENT ACTS, ERRORS, OR OMISSIONS; PROVIDED AND EXCEPT HOWEVER, THAT THIS INDEMNIFICATION PROVISION SHALL NOT BE CONSTRUED AS REQUIRING ENGINEER TO INDEMNIFY OR HOLD CITY OR ANY OF ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES HARMLESS

FROM ANY LOSS, DAMAGES, LIABILITY OR EXPENSE, ON ACCOUNT OF DAMAGE TO PROPERTY OR INJURIES TO PERSONS CAUSED BY DEFECTS OR DEFICIENCIES IN DESIGN CRITERIA AND INFORMATION FURNISHED TO ENGINEER BY CITY, OR ANY SIGNIFICANT DEVIATION IN CONSTRUCTION FROM ENGINEER'S DESIGNS, WORKING DRAWINGS, SPECIFICATIONS OR OTHER ENGINEERING DOCUMENTS.

Approval by CITY of contract documents shall not constitute or be deemed to be a release of the responsibility and liability of ENGINEER, its officers, agents, employees and subconsultants, for the accuracy and competency of the services performed under this Agreement, including but not limited to evaluations, reports, surveys, designs, working drawings and specifications, and other engineering documents. Approval by CITY shall not be deemed to be an assumption of such responsibility and liability by CITY for any error, omission, defect, deficiency or negligence in the performance of ENGINEER's professional services or in the preparation of the evaluations, reports, surveys, designs, working drawings and specifications or other engineering documents by ENGINEER, its officers, agents, employees and subconsultants, it being the intent of the parties that approval by CITY signifies CITY's approval of only the general design concept of the improvements to be constructed.

XI. INSURANCE

For the duration of this Agreement, ENGINEER shall maintain the following minimum public liability and property damage insurance which shall protect ENGINEER, its subcontractors, its subconsultants and CITY from claims for injuries, including accidental death, as well as from claims for property damage which may arise from the performance of work under this Agreement. ENGINEER shall provide a Certificate of Insurance verifying that the following minimum limits of coverage are provided:

A. Worker's Compensation Insurance:

Statutory requirements (\$ 300,000 minimum)

B. Comprehensive General Liability and Bodily Injury:

Bodily Injury	\$ 500,000 per person, or \$ 1,000,000 per occurrence; and
Property Damage	\$ 100,000 each occurrence; or
Combined Single Limit	\$ 1,000,000 aggregate

C. Comprehensive Automobile Liability:

Bodily Injury	\$ 500,000 per person, or \$ 1,000,000 per occurrence; and
Property Damage	\$ 100,000 each occurrence; or
Combined Single Limit	\$ 1,000,000 aggregate

D. Professional Liability:
Errors and Omissions \$ 1,000,000

The Certificate of Insurance shall contain a provision that such insurance cannot be canceled or modified without thirty (30) days prior written notice to CITY.

XII. ARBITRATION

No arbitration arising out of or relating to this Agreement shall occur without both parties' written approval.

XIII. TERMINATION AND SUSPENSION

- A. CITY may terminate this Agreement at any time for convenience or for any cause by a notice in writing to ENGINEER. Either CITY or ENGINEER may terminate this Agreement in the event the other party fails to perform in accordance with the provisions of this Agreement. Upon receipt of such notice, ENGINEER shall immediately discontinue all services and work and the placing of all orders or the entering into contracts for supplies, assistance, facilities, and materials, in connection with the performance of this Agreement and shall proceed to cancel promptly all existing contracts insofar as they are chargeable to this Agreement.
- B. If CITY terminates this Agreement under the foregoing Paragraph A, CITY shall pay ENGINEER a reasonable amount for services performed prior to such termination, which payment shall be based upon the payroll cost of employees engaged on the work by ENGINEER up to the date of termination of this Agreement and for subcontract and reproduction in accordance with the method of compensation stated in Section VIII: "Compensation" hereof. In the event of termination, the amount paid shall not exceed the amount appropriate for the percentage of work completed.

XIV. SUCCESSORS AND ASSIGNS

CITY and ENGINEER each 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; except as above, neither CITY nor ENGINEER shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of CITY.

XV. AUTHORIZATION, PROGRESS, AND COMPLETION

CITY and ENGINEER agree that the PROJECT is planned to be completed in accordance with the Exhibit A: "Project Schedule" which is attached hereto and made a part hereof. ENGINEER shall employ manpower and other resources and use professional skill and diligence to meet the schedule; however, ENGINEER shall not be responsible for schedule delays resulting from conditions beyond ENGINEER's control. With mutual agreement, CITY and ENGINEER may modify the Project Schedule during the course of the PROJECT and if such modifications affect ENGINEER's compensation, it shall be modified accordingly, subject to City Council approval.

For Additional Engineering Services, the authorization by CITY shall be in writing and shall include the definition of the services to be provided, the schedule for commencing and completing the services and the basis for compensation as agreed upon by CITY and ENGINEER.

It is understood that this Agreement contemplates the full and complete Engineering services for this PROJECT including any and all services necessary to complete the work as outlined in Exhibit B: "Basic Engineering Services". Nothing contained herein shall be construed as authorizing additional fees for services to provide complete services necessary for the successful completion of this PROJECT.

XVI. SUBCONTRACTS

ENGINEER shall be entitled, only if approved by CITY, to subcontract a portion of the services to be performed by ENGINEER under this Agreement.

XVII. RIGHT TO AUDIT

ENGINEER agrees that CITY shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any directly pertinent books, design calculations, quantity take-offs, documents, papers and records of ENGINEER involving transactions relating to this Agreement. ENGINEER agrees that CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. CITY shall give ENGINEER reasonable advance notice of intended audits.

ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that CITY shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, design calculations, quantity take-offs,

documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this article. CITY shall give subconsultant reasonable advance notice of intended audits.

XVIII. EXHIBITS

Both parties agree to the following exhibits and as such, the following exhibits are made a part of this Agreement:

Exhibit "A"	Project Schedule
Exhibit "B"	Basic Engineering Services
Exhibit "C"	Special Engineering Services
Exhibit "D"	Additional Engineering Services
Exhibit "E"	Services to be provided by the City
Exhibit "F"	Compensation
Exhibit "G"	Form 1295

XIX. MISCELLANEOUS

- A. Authorization to Proceed. Signing this Agreement shall be construed as authorization by CITY for ENGINEER to proceed with the work, unless otherwise provided for in the authorization.
- B. Legal Expenses. In the event legal action is brought by CITY or ENGINEER against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions of this Agreement, the prevailing party in any litigation between the parties to this agreement shall be entitled to reasonable attorney fees.
- C. Notices. Any notice or correspondence required under this Agreement shall be sent by certified mail, return receipt requested, or by personal delivery and shall be effective upon receipt, if addressed to the party receiving the notice or correspondence at the following address:

If to ENGINEER:

Freese and Nichols, Inc.
Attn: Jeremy Dixon, P.E., CFM
2711 N Haskell Ave, Suite 3300
Dallas, Texas 75204

If to CITY:

City of North Richland Hills
Attn: Justin Naylor, PE, CFM
Public Works & Engineering Department
4301 City Point Drive
North Richland Hills, Texas 76180

With Copies to the City Manager and City Attorney at the same address.

- D. Independent Contractor. ENGINEER shall perform services hereunder as an independent contractor, and not as an officer, agent, servant or employee of the CITY and ENGINEER shall have the exclusive right to control services performed hereunder by ENGINEER, and all persons performing same, and shall be responsible for the negligent acts and omissions of its officers, agents, employees, and subconsultants. Nothing herewith shall be construed as creating a partnership or joint venture between CITY and ENGINEER, its officers, agents, employees and subconsultants; and the doctrine of respondent superior has no application as between CITY and ENGINEER.
- E. Venue. This Agreement shall be governed by the laws of the State of Texas, and venue in any proceeding relating to this Agreement shall be in Tarrant County, Texas.
- F. Entire Agreement. This Agreement represents the entire agreement between CITY and ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both CITY and ENGINEER.
- G. Severability. If any provision in this Agreement shall be held illegal by a valid final judgment of a court of competent jurisdiction, the remaining provisions shall remain valid and enforceable.
- H. Disclosure. By signature of this Agreement, ENGINEER warrants to CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including but not limited to personal financial interests, direct or indirect, in property abutting the PROJECT and business relationships with abutting property owners. ENGINEER further warrants that it will make disclosure in writing of any conflicts of interest which develop subsequent to the signing of this Agreement and prior to final payment under this Agreement.

This Agreement is executed in two (2) counterparts.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement this the _____ day of _____, 2020.

CITY OF NORTH RICHLAND HILLS
(CITY)

FREESE AND NICHOLS, INC
(ENGINEER)

By: _____
Mark Hindman, City Manager

By: _____
Scott Hubley, Principal

Date: _____

Date: _____

ATTEST:

ATTEST:

Alicia Richardson, City Secretary

Notary Public in and for the State of Texas

APPROVED TO FORM AND LEGALITY:

Maleshia B. McGinnis, City Attorney

Type or Print Notary's Name

My Commission Expires:

CITY SEAL

CORPORATE SEAL

EXHIBIT A
PROJECT SCHEDULE
FOR
MACKEY CREEK FLOOD STUDY

PROJECT SCHEDULE

The Scope of Services for this PROJECT is based on the following schedule:

Activity	Due Date
Notice to Proceed from City	March 30, 2020
Mobilize Surveyor	April 22, 2020
Submit Draft Drainage Report	June 24, 2020
Receive City Review Comments	July 8, 2020
Submit LOMR to City	July 29, 2020
Receive City LOMR Submittal Comments	August 5, 2020
Submit LOMR to FEMA	August 5, 2020
Submit Concept Alternatives to City	September 30, 2020
Receive City Review Comments	October 14, 2020
Submit Final Alternative to City	November 18, 2020

Note: Due dates shown are submittal dates of task activities listed.

EXHIBIT B

**BASIC ENGINEERING SERVICES
FOR
MACKEY CREEK FLOOD STUDY**

The scope of work for BASIC Engineering Services involves Hydrologic and Hydraulic Analysis, Floodplain Mapping, and Conceptual Design services.

Project Description

The City has outdated flood hazard mapping of Mackey Creek that is apparently based on incorrect information. As part of this project the City's goals include:

1. Updated analysis of the study area, shown in Figure 1 to accurately determine flood risk
2. Updated flood hazard mapping to correctly reflect FEMA floodplain maps
3. Determine required drainage improvements to reduce the flood risk in the area

This scope includes the following Tasks:

Task 1 — Project Management and Meetings

Task 2 — Data Collection

Task 3 — Hydrology and Hydraulics

Task 4 — Reports and Deliverables

Task 5 — FEMA Submittal

Task 6 — Alternatives Analysis

Basic Services:

Task 1 — Project Management and Meetings

1. **Project Management** — FNI will conduct basic Project Management tasks for the duration of the project including project coordination, invoicing, and subconsultant management. As part of the project coordination, FNI will provide monthly project status updates including tasks completed in the previous month, upcoming tasks, data needs from the City, etc. and will be included as part of the invoice.
2. **Meetings** — FNI will plan and participate in the following four (4) meetings:
 - a. Project kick-off meeting with the City to confirm scope, team, communication, and schedule within one week of Notice to Proceed.
 - b. First draft report review with the City to discuss findings of the updated analysis approximately three (3) months after Notice to Proceed.

- c. Concept drainage alternatives review with the City to discuss conceptual sizes, alignments, and order-of-magnitude cost estimates. In this meeting the City will select a preferred concept for further refinement that may include elements of multiple concepts approximately six (6) months after Notice to Proceed.
- d. An additional unspecified meeting as needed.

Task 2 — Data Collection

- 1. Data Collection and Review** — FNI will obtain and review previous watershed studies, reports, record drawings, and GIS data related to the study area from the City. FNI assumes the City will provide the Effective FEMA models, record drawings, digital GIS data, and best available LIDAR data within the study area as available within three (3) weeks of Notice to Proceed.

FNI will review the GIS data provided and determine gaps in the data that would limit model accuracy and invite comments during the LOMR development stage.

- 2. Field Visit** — Following review of the available data, FNI will perform a Field Visit to collect as many of the gaps as possible, and verify GIS data such as drainage infrastructure sizes, configurations, etc.
- 3. Survey** — Following the field visit, FNI will engage SURVEYOR to collect precise location and elevation data for inlets, manholes, junction boxes, etc. and cross sections of the channel downstream of Briley Drive and Manor Drive. FNI Estimates approximately thirty-six (36) structures, seven (7) creek cross sections, two (2) roadway typical sections, and two (2) culverts will be surveyed.

Task 3 — Hydrology and Hydraulics

- 1. Hydrology** — FNI will develop the detailed hydrologic parameters including new subbasin delineation, rainfall distribution (Atlas 14, balanced frequency storm), hydrologic loss parameters (SCS Curve Number), and hydrograph transform parameters (SCS Time of Concentration). Storm events of 2-, 5-, 10-, 25-, 50-, 100-, and 500-yr return periods (Annual Maximum Series) will be analyzed.

FNI will develop hydrologic parameters to accurately map the flood risk in the Mackey Creek system, meaning that some inlets may be grouped, and hydraulic parameters considered together, where appropriate.

- 2. Hydraulics** — FNI will develop the detailed hydraulic model using XP-Storm version 2019.1 based on the GIS data that has been preprocessed and will incorporate the survey data collected under this contract.

Task 4 — Report and Deliverables

- 1. First Draft Report** — FNI will develop the First Draft Report, which documents the development and findings of the initial, detailed hydrology and hydraulics model. The report will include flood hazard ratings based on depth and velocity for all roadway crossings shown to be impacted, and a tabulation of structures assumed to be impacted by storm event based on a project-wide standard estimate of finish floor elevation based on the Lowest Adjacent Grade as determined from the LIDAR data. No finish floor elevations will be collected as part of the survey.

Deliverable: First Draft Report and detailed XP-Storm model of the study area approximately four (4) months after Notice to Proceed.

- 2. Final Report** — Following the First Draft Report review meeting with the City and upon receipt of comments by the City, FNI will revise the models and report as needed to address City Comments and provide a Final Report and updated XP-Storm model.

Deliverable: Final Report and detailed XP-Storm model within four (4) weeks of receipt of comments by the City.

Task 5 — FEMA Submittal

- 1. FEMA Submittal** — FNI does not anticipate a need to revise the detailed hydrology and hydraulics model to simplify for FEMA. FNI will prepare MT-2 forms, Hydrologic and Hydraulic Workmaps, Revised FIS Profiles, Summary of Discharges, etc. as part of the LOMR submittal. LOMR fees payable to FEMA, if applicable, are not included as part of this contract.

Deliverable: LOMR submittal to City for review and signature of MT-2 forms, FNI submit final to FEMA within four (4) weeks of receipt of comments on the First Draft Report by the City.

- 2. Respond to FEMA Comments** — FNI assumes two (2) rounds of comments will need to be addressed. Addressing additional comments will be considered an additional service.

Deliverable: Up to two (2) LOMR submittals to FEMA within four (4) weeks of receipt of comments from FEMA.

Task 6 — Alternatives Analysis

Alternatives analysis will only begin upon written notice from City

1. **Initial Concept Alternatives** — FNI will develop concept alternative models for the following scenarios to meet the City's criteria:
 - a. Increased pipe conveyance and inlet improvements
 - b. Daylight underground conduit to a grass-lined trapezoidal open channel
 - c. Daylight underground conduit to a concrete-lined vertical wall open channel

Concept alternatives are intended to inform a selection by the City and will be developed as simply as possible and will not be revised for basic alignment or profile changes that might improve the results slightly. Order of magnitude costs will be developed for each concept for high level comparison by the City. Concept alternatives analysis will be documented in a technical memorandum.

Deliverable: Technical memorandum of Initial Concept Alternatives and draft recommendation approximately two (2) months after the final report submittal.

2. **Proposed Detailed Alternative** — Following a meeting to review the findings, the City will provide comments on the technical memorandum and request a specific alternative for a final recommendation within two (2) weeks. FNI will update the XP-Storm model and develop the final recommended project to improve flood risk within the study area. FNI will develop an AACE Class IV cost estimate (-20% to +30%) for the overall project.

Deliverable: Final Technical memorandum including the final recommended project, detailed cost estimate, and XP-Storm model.

EXHIBIT C
SPECIAL ENGINEERING SERVICES
FOR
MACKEY CREEK FLOOD STUDY

No SPECIAL Engineering Services are included as part of this scope of work.

EXHIBIT D

ADDITIONAL ENGINEERING SERVICES FOR MACKEY CREEK FLOOD STUDY

ADDITIONAL SERVICES: The following services are additional and shall not be included in the Scope of Services unless specifically approved by the CITY. FNI shall inform the CITY when a particular service falls into the “Additional Services” category. Compensation for Additional Services shall be on an hourly basis.

1. Additional field surveys beyond what is included in the scope above.
2. Recreation of existing H&H models if digital files of the effective models are not available.
3. Revisions to existing H&H models or creation of new models for areas not identified in Figure 1.
4. Additional alternatives to be detailed modeled or evaluated, including analysis of study areas beyond those outlined in scope of work.
5. Public Outreach or additional meetings.
6. Appearances before regulatory agencies other than the CITY.
7. Assistance to the CITY as an expert witness in any litigation with third parties arising from the development of the Project.
8. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
9. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by CITY or 2) due to other causes not solely within the control of FNI.
10. Preparing data and reports for assistance to CITY 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.
11. Assisting CITY in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
12. Visits to the project areas or City facilities in excess of the number of trips, coordination meetings or contract completion activities as defined in Basic and Special Services.
13. Providing environmental investigations coordination with environmental resource agencies, jurisdictional determinations, and state or federal permitting.
14. Providing basic or additional services on an accelerated time schedule. The scope of this service does not include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the CITY.
15. Soil and foundation investigations, including field and laboratory tests, borings, related engineering analyses, and recommendations.
16. Providing Geotechnical investigations, studies, or reports.
17. Additional copies of reports.

18. Preparation of applications and supporting documents for government grants, loans, or planning advances for public works projects.
19. Acquisition of individual federal or state permits that may be required.
20. Preparation of environmental statements.

EXHIBIT E

SERVICES TO BE PROVIDED BY THE CITY FOR MACKEY CREEK FLOOD STUDY

The CITY will provide the following services to the ENGINEER in the performance of the PROJECT upon request:

- I.** Provide any existing data the CITY has on file concerning the PROJECT, if available.
- II.** Provide any available As-Built plans for existing streets and drainage facilities, if available.
- III.** Provide any available As-Built plans for existing water and sanitary sewer mains, if available.
- IV.** Assist the ENGINEER, as necessary, in obtaining any required data and information from TxDOT and/or other local utility companies.
- V.** Provide standard details and specifications in digital format.
- VI.** Assist the ENGINEER by requiring appropriate utility companies to expose underground utilities within the Right-Of-Way, when required.
- VII.** Give prompt written notice to ENGINEER whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of the ENGINEER's services.

EXHIBIT F
COMPENSATION
FOR
MACKEY CREEK FLOOD STUDY

I. COMPENSATION

For and in consideration of the services to be rendered by the ENGINEER, the CITY shall pay, and the ENGINEER shall receive the compensation hereinafter set forth for the Design and Construction Phases of the work and additionally for Special Engineering Services and/or Additional Engineering Services that are in addition to the Basic Engineering Services. All remittances by CITY of such compensation shall either be mailed or delivered to the ENGINEER's home office as identified in the work authorization.

- A. Compensation for the Basic Engineering Services shall be completed for an hourly not to exceed fee of **\$100,413**.
- B. Compensation for Special Engineering Services not covered by the Basic Engineering Services provided herein above shall be as follows:
- C. Compensation for Additional Engineering Services not covered by Basic Engineering Services or Special Engineering Services provided herein shall be as follows:

<u>Position</u>	<u>Hourly Rate</u>	
	<u>Min</u>	<u>Max</u>
Professional 1	81	146
Professional 2	95	154
Professional 3	115	220
Professional 4	151	237
Professional 5	188	350
Professional 6	158	391
Construction Manager 1	93	173
Construction Manager 2	109	185
Construction Manager 3	152	217
Construction Manager 4	206	281
CAD Technician/Designer 1	67	147
CAD Technician/Designer 2	98	152
CAD Technician/Designer 3	131	201
Corporate Project Support 1	50	122
Corporate Project Support 2	71	168
Corporate Project Support 3	98	259
Intern / Coop	42	84

Rates for In-House Services

Technology Charge

\$8.50 per hour

Bulk Printing and Reproduction

	<u>B&W</u>	<u>Color</u>
Small Format (per copy)	\$0.10	\$0.25
Large Format (per sq. ft.)		
Bond	\$0.25	\$0.75
Glossy / Mylar	\$0.75	\$1.25
Vinyl / Adhesive	\$1.50	\$2.00
Mounting (per sq. ft.)	\$2.00	
Binding (per binding)	\$0.25	

Travel

Standard IRS Rates

For all direct non-labor and/or subcontract expense, including mileage, travel and living expenses at invoice or internal office cost times a multiplier of **1.1**.

Payments to the ENGINEER for authorized Additional Engineering Services will be due monthly, upon presentation of monthly statement by the ENGINEER for such services.

II. AUDIT AND SCOPE CHANGE

Cost budgets are set forth above and are subject to the audit provisions of this Agreement, Section XVII: "Right to Audit". It is also understood that the cost budgets are based upon ENGINEER's best estimate of work and level of effort required for the proposed scope of services. As the PROJECT progresses, it is possible that the level of effort and/or scope may differ up or down from that assumed. If there are no scope changes, the ENGINEER shall receive the full amount of lump sum and unit price fees, regardless of the cost. If at any time it appears that the cost budget may be exceeded, the ENGINEER shall notify the CITY as soon as possible in writing.

If there is a scope change, the ENGINEER shall notify the CITY as soon as possible in writing and shall include a revised scope of services, estimated cost, revised fee schedule, and a revised time of completion. Upon negotiation and agreement via a signed amendment by both parties, the cost budget, fee schedule, and total budget will be adjusted accordingly.

CITY shall not be obligated to reimburse the ENGINEER for costs incurred in excess of the cost budget. The ENGINEER shall not be obligated to perform on any change in scope of work or otherwise incur costs unless and until the CITY has notified the ENGINEER in writing that the total budget for Engineering Services has been increased and shall have specified in such notice a revised total budget which shall thereupon constitute a total budget for Engineering Services for performance under this Agreement.

A detailed scope of work, total budget, and schedule will be prepared by the ENGINEER and executed by the CITY if the ENGINEER is authorized to perform any Additional Engineering Service(s).

III. PAYMENT

Payments to the ENGINEER will be made as follows:

A. Invoice and Time of Payment

Monthly invoices will be issued by the ENGINEER for all work performed under this Agreement. Invoices are due and payable on receipt. Invoices will be prepared in a format approved by the CITY prior to submission of the first monthly invoice. Once approved, the CITY agrees not to require changes in the invoice format, but reserves the right to audit. Monthly payment of the fee will be in proportion to the percent completion of the total work (as indicated in Exhibit B: "Basic Engineering Services").

Upon completion of services enumerated in Exhibit B: "Scope of Basic Engineering Services", the final payment of any balance will be due upon receipt of the final invoice.

EXHIBIT G

FORM 1295
FOR
MACKEY CREEK FLOOD STUDY

[Form 1295 is submitted as the following page]