

**NORTH CAROLINA  
DURHAM COUNTY**

**CONSULTANT CONTRACT**

**THIS CONTRACT** is made, and entered into this the **1<sup>st</sup> day of July, 2019**, by and between the **COUNTY of DURHAM**, a political subdivision of the State of North Carolina, (hereinafter referred to as "COUNTY"), and **FREESE AND NICHOLS, INC.**, a corporation duly authorized to do business in the state of North Carolina, (hereinafter referred to as "CONSULTANT").

For and in consideration of mutual promises to each as herein after set forth, the parties hereto do mutually agree as follows:

- 1. SCOPE OF SERVICES.** CONSULTANT hereby agrees to provide the services and/or materials under this contract pursuant to the provisions and specifications identified in "Attachment 1" (hereinafter collectively referred to as "Services"). Attachment 1 is hereby incorporated herein and made a part of this contract. Time is of the essence with respect to all provisions of this contract that specify a time for performance.

The COUNTY will perform on-going contract monitoring to ensure that the terms of this contract are complied with. CONSULTANT agrees to cooperate with the COUNTY in its monitoring process and provide documentation and/or information requested during the term of this Agreement for the purpose of monitoring the services provided by CONSULTANT.

- 2. EFFECTIVE DATE AND TERM OF CONTRACT.** The "effective date" of this Contract shall be the date first set forth above in the preamble to this Contract, irrespective of the date of execution by the parties. The first date written above is **July 1, 2019**. All renewal or non-renewal periods or deadlines stated in this Contract, if any, shall be calculated based on the "effective date" indicated above.

The Term of this contract for services is from **July 1, 2019 to December 31, 2021**, unless sooner terminated as provided herein.

- 3. PAYMENT TO CONSULTANT.** CONSULTANT shall receive from COUNTY an amount not to exceed **Fifty-nine thousand thirty-five and No/100 Dollars (\$59,035.00)** as full compensation for the provision of Services. COUNTY agrees to pay CONSULTANT at the rates specified for Services performed to the satisfaction of the COUNTY, in accordance with this contract, and Attachment 1. Unless otherwise specified, CONSULTANT shall submit an itemized invoice to COUNTY by the end of the month during which Services are performed. A Funds Reservation number may be assigned to encumber the funds associated with this contract and must appear on all invoices and correspondence mailed to Purchaser. Payment will be processed promptly upon receipt and approval of the invoice by COUNTY.

- 4. INDEPENDENT CONTRACTOR.** COUNTY and CONSULTANT agree that CONSULTANT is an independent contractor and shall not represent itself as an agent or employee of COUNTY for any purpose in the performance of CONSULTANT's duties under this Contract. Accordingly, CONSULTANT shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONSULTANT's activities in accordance with this Contract. For purposes of this contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONSULTANT, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

- 5. CONFIDENTIALITY, DATA SECURITY, TRAINING AND NON-DISCLOSURE.** CONTRACTOR acknowledges and agrees that, in the course of its engagement with COUNTY, CONTRACTOR or its licensors, subcontractors or suppliers in connection with the services to be rendered under this Contract may receive or have access to "confidential information" or "personal identifiable information".

CONTRACTOR or its licensors, contractors or suppliers has obtained or may need to obtain confidential information from the COUNTY in connection with the provision of services to the COUNTY or the discussions of such a proposed relationship.

The COUNTY and CONTRACTOR desire to stipulate and agree that any disclosure of confidential information in connection with the provision of services or the discussion of such a proposed relationship has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

In consideration of the pursuit of current discussions and payment for the services, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

**5.1 DEFINITIONS.** As used in this Contract, the following terms shall have the meanings set forth below:

**Confidential Information.** The term "Confidential Information" shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, which falls within any of the following general categories:

- a. Trade Secrets. For purposes of this Contract, trade secrets consist of information of the COUNTY or CONTRACTOR or any of its suppliers, contractors or licensors: (a) that Derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- b. Highly Restricted Information. CONTRACTOR acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) CONTRACTOR will also comply with any more restrictive instructions or written policies that may be provided by the COUNTY from time to time to protect the confidentiality of Highly Restricted Information, as defined below:
  1. Information of the COUNTY or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."
  2. Information relating to criminal investigations conducted by the COUNTY, and records of criminal intelligence information compiled by the COUNTY.
  3. Information contained in the COUNTY's personnel files, as defined by NCGS §153A-98. This consists of all information gathered by the COUNTY about employees, except for that information which is a matter of public record under North Carolina law.
  4. Citizen or employee social security numbers collected by the COUNTY.
  5. Computer security information of the COUNTY, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
  6. Local tax records of the COUNTY that contained information about a taxpayer's income or receipts.
  7. Any attorney/client privileged information disclosed by either party.

8. Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
9. The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.
10. Protected Information (PHI), as defined in the Insurance Portability and Accountability Act (HIPAA), and any other information that is designated as confidential under federal or state law.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential information shall include information disclosed or revealed within one year prior to the date of this Contract.

**Personal Identifiable Information.** The term "Personal Identifiable Information" shall mean information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked to a specific individual.

**5.2 RESTRICTIONS.** CONTRACTOR shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- a. Not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the COUNTY in writing.
- b. Not directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an employee, agent, subcontractor or CONTRACTOR of the COUNTY or CONTRACTOR having a need to know such Confidential Information for purpose or performing work contemplated by this Contract between the COUNTY and CONTRACTOR, and who has executed a confidentiality agreement incorporating substantially the form of this Confidentiality and Non-Disclosure Agreement. CONTRACTOR shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the County's prior written consent.
- c. Not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written contracts between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- d. Not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- e. Use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
- f. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, CONTRACTOR shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- g. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the COUNTY or destroyed upon satisfaction of the purpose of the disclosure of such information.

- h. Restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
- i. Take all reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract.

**5.3 EXCEPTIONS.** The COUNTY agrees that CONTRACTOR shall have no obligation with respect to any Confidential Information that CONTRACTOR can establish was:

- a. Already known to CONTRACTOR prior to being disclosed by the COUNTY;
- b. Or becomes publicly known through no wrongful act of CONTRACTOR;
- c. Rightfully obtained by CONTRACTOR from a third party without similar restriction and without breach hereof;
- d. Used or disclosed by CONTRACTOR with the prior written authorization of the COUNTY;
- e. Disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, CONTRACTOR shall first give to the other party notice of such requirement or request;
- f. Disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued Subpoena, provided that CONTRACTOR shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.

**5.4 REMEDIES.** CONTRACTOR acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the COUNTY's proprietary interests therein. Accordingly, it is agreed that if CONTRACTOR breaches its obligations hereunder, the COUNTY shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

**5.5 DATA SECURITY.** The CONTRACTOR shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations and rules.

The CONTRACTOR shall report a suspected or confirmed security breach to the COUNTY Department Procurement Analyst within twenty-four (24) hours after the breach is first discovered, provided that the CONTRACTOR shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.

If any applicable Federal, State, or local law, regulation, or rule requires the CONTRACTOR to give written notice of a security breach to affect persons, the CONTRACTOR shall bear the cost of the notice.

**5.6 TRAINING AND NON-DISCLOSURE.** Upon request by the COUNTY, CONTRACTOR agrees to ensure compliance and the security of "confidential information" and "personal identifiable information", by having its employees, agents and subcontractors take online privacy and security awareness training provided by COUNTY, by way of an internet link or some other electronic method to be provided by COUNTY. CONTRACTOR, at the request of COUNTY, shall execute a non-disclosure agreement if, and when submitted by COUNTY.

- 6. OWNERSHIP OF WORK.** All Work and any documents prepared by the CONSULTANT for or on account of this contract shall be the owned by the COUNTY, and the COUNTY shall have all common law, statutory and other reserved rights, including copyright.

Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the project is not to be construed as publication in derogation of the COUNTY's reserved rights.

- 7. INDEMNIFICATION.** To the fullest extent permitted by laws and regulations, CONSULTANT shall indemnify and hold harmless the COUNTY and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or mediation) arising out of or resulting from CONSULTANT's negligent performance of this Contract or the actions of the CONSULTANT or its officials, employees, or subcontractors under this Contract or under contracts entered into by the CONSULTANT in connection with this Contract. This indemnification shall survive the termination of this Contract.

In claims against any person or entity indemnified under this provision by an employee of the CONSULTANT, a subcontractor, an employee of a subcontractor, or an agent of the CONSULTANT or a subcontractor, the indemnification obligation under this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONSULTANT or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

- 8. INSURANCE.** CONSULTANT shall procure and maintain for the duration of the contract the following insurance coverage from an insurance company(s) possessing a rating of A-VII or higher from the A.M. Best Company and licensed to do business in North Carolina. All of the policies required of the CONSULTANT shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the COUNTY. In the event CONSULTANT'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "waiver of subrogation" this contract shall govern. CONSULTANT shall advise the COUNTY of any cancellation, non-renewal, or material change in any policy within ten (10) days of notification of such action and provide updated certificates of insurance evidencing renewals within fifteen (15) days of expiration. CONSULTANT'S insurance shall be primary and any insurance or self-funded liability programs maintained by the COUNTY shall not contribute with respect to the CONSULTANT'S insurance. COUNTY shall not be listed as an additional insured on any Insurance Policy or Certificate of Insurance of the CONSULTANT. In the event CONSULTANT'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "additional insured" this contract shall govern.

**8.1 Commercial General Liability:** Insurance Services Office (ISO) Form CG 00 01 on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate.

**8.2 Commercial Automobile Liability:** ISO Form CA 00 01 covering any auto with limit not less than **\$1,000,000** per accident for bodily injury and property damage.

**8.3 Worker's Compensation and Employers Liability:** as required by The State of North Carolina, with statutory limits, and Employers Liability Insurance with a limit of no less than **\$1,000,000** per occurrence.

By requiring insurance herein, the COUNTY does not represent that coverage and limits will necessarily be adequate to protect CONSULTANT, and such coverage and limits shall not be deemed as a limitation on CONSULTANT's liability under the indemnities granted to the COUNTY in this Contract. CONSULTANT shall provide the COUNTY a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage required. CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

The failure of the COUNTY at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce the obligations of the CONSULTANT to maintain such insurance or to meet its obligations under the indemnification provisions.

Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the COUNTY, which immunity is hereby reserved to the COUNTY.

## **9. TERMINATION.**

**9.1 EVENT OF DEFAULT.** Any one or more of the following acts or omissions of the CONSULTANT shall constitute an Event of Default hereunder:

- a. Failure to perform the Services satisfactorily or on schedule,
- b. Failure to submit any report required hereunder; and/or
- c. Failure to perform any other covenant, term, or condition of this Agreement.

Upon the occurrence of an Event of Default, the County may take one or more or all of the following actions:

- a. Give CONSULTANT written Notice of the Event of Default, specifying the Event of Default and requiring it to be remedied within, in the absence of greater or lesser specification of time, seven (7) calendar days from the date of the notice; and if the Event of Default is not timely remedied, terminate the agreement, effective two (2) days after giving the CONSULTANT written Notice of Termination; and/or
- b. Deduct any and all expenses incurred by the County for damages caused by the CONSULTANT's Event of Default; and/or
- c. Treat the agreement as breached and pursue any of its remedies at law or in equity, or both, including damages and specific performance.

**9.2 TERMINATION FOR CONVENIENCE.** This Contract may be terminated, without cause, by either party upon thirty (30) days written notice to the other party. This termination notice period shall begin upon receipt of the Notice of Termination.

Termination of this Contract, under either section 9.1 or 9.2, shall not form the basis of any claim for loss of anticipated profits by either party.

**10. COUNTY NOT RESPONSIBLE FOR EXPENSES.** COUNTY shall not be liable to CONSULTANT for any expenses paid or incurred by CONSULTANT, unless otherwise agreed in writing.

**11. EQUIPMENT.** CONSULTANT shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.

**12. COMPLIANCE WITH LAWS.** CONSULTANT shall abide by all statutes, rules, regulations, laws, and executive orders Federal, State and Local as they relate to, but are not limited to, (i) services in general, (ii) payment of employees, subcontractors and agents, (iii) the Fair Labor Standards Act and (iv) the Wage and Hour Division. In the event CONSULTANT is determined by the final order of a court or appropriate agency to be in violation of any Federal, State or Local statute, rule, regulation, law or executive order or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY and CONSULTANT may be declared ineligible for further COUNTY contracts.

- 13. HEALTH AND SAFETY.** CONSULTANT shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing Services under this Contract.
- 14. NON-DISCRIMINATION IN EMPLOYMENT.** CONSULTANT shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONSULTANT shall take affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONSULTANT is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY, and CONSULTANT may be declared ineligible for further COUNTY contracts.
- 15. EMPLOYMENT ADVERTISING REQUIREMENTS.** CONSULTANT shall post local job openings, in connection with this contract, with the City of Durham's Office of Economic and Workforce Development, the North Carolina Department of Commerce-Division of Employment Services (formerly ESC, Employment Security Commission) and with the Durham County Department of Social Services throughout the term of this Agreement; provided that the foregoing requirement does not limit CONSULTANT'S ability to advertise and/or otherwise post job openings with other organizations or media outlets.
- 16. E-VERIFY.** As a condition of payment for services rendered under this agreement, CONSULTANT shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if CONSULTANT provides the services to the County utilizing a subcontractor, CONSULTANT shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. CONSULTANT shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.
- 17. AFFORDABLE CARE ACT REQUIREMENTS (Applicable Only to Staffing Agencies).**  
Beginning in 2015, employers with 100 or more full-time equivalent employees (50 or more beginning in 2016) must offer health insurance coverage that is affordable and provides "minimum value" to full-time employees and dependents as defined by the Patient Protection and Affordable Care Act or face penalties. Staffing companies under contract with Durham County are required to provide affordable minimum essential coverage as defined by the Patient Protection and Affordable Care Act and to indemnify Durham County against any 4980H penalties that result from their failure to provide the appropriate coverage. By signing this contract as a Staffing Company, CONSULTANT shall comply with the aforementioned health insurance coverage requirements of the Affordable Care Act and to indemnify the County against any associated 4980H penalties. Please complete Exhibit A and return with this contract.
- 18. SECURITY BACKGROUND CHECKS.** The Consultant is responsible for requesting and paying for criminal history checks on all individuals providing services under this contract who will be obtaining County identification badges and allowed unescorted access to County facilities. Background checks can be provided by any vendor, or from a North Carolina State agency, providing that the criminal history check is done nationwide. The Sheriff's Office will conduct background investigations for those Consultant's employees who will be working at the Courthouse or Detention Center. A criminal history will not automatically disqualify a Consultant employee from employment on a County contract unless explicitly mandated by law.

The Consultant will send the results of the background checks to their County point of contact who will provide them to the Durham County Security Manager. The Security Manager will individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in Durham County buildings. The Security Manager will consult the Legal Office on any negative determinations. The Security Manager will notify the Consultant's County point of contact of the results of the review. A Consultant can appeal a negative determination by the Security Manager to the County Manager for final disposition. Appeals need to be submitted in writing to the

contract point of contact within 30 days of notice of a decision to remove or deny an individual from working the County contract due to adverse information in the background check.

This information will be updated annually by the Contractor, 90 days prior to the renewal or extension of the contract, and submitted to their County point of contact who will provide them to the Durham County Security Manager. Personnel without a currently approved background check will have their access to those buildings restricted.

Additional background screening may be necessary at specific county buildings. The Contractor shall provide names of all individuals in the Contractor communications log and to the County Representative. This information will be reviewed annually.

For those Contractor employees who will be working at the Courthouse or Detention Center, the Sheriff's Office will make the security determination. The Contractor will provide the results of their background check to the Major for Support Services who will conduct an additional investigation and then individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in the Courthouse or Detention Facility. A Contractor can appeal a negative determination to the Chief Deputy for final disposition. Appeals need to be submitted in writing to the Chief Deputy within 30 days of notice of a decision to remove or deny an individual from working the contract due to adverse information in the background check. While an appeal is pending, the employee will not be allowed access to the Courthouse or Detention Facility.

This information will be updated by the Contractor and submitted to the Sheriff's Office annually, 90 days prior to the renewal or extension of the contract. Personnel without a currently approved background check will have their access to those buildings restricted.

**19. AUDIT RIGHTS.** For all Services being provided hereunder, COUNTY shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of the Services. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, CONSULTANT must make the materials to be audited available within one (1) week of the request for them.

**20. DISPUTE RESOLUTION PROCEDURE.** To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the COUNTY and the CONSULTANT, arising from this Agreement or the services and/or materials being provided by the CONSULTANT, shall be sent to the Durham County Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the County Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or his designee, shall notify the Mediator who will conduct a mediation and notify the CONSULTANT in writing of the decision within forty five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of schedule changes and alternate means of providing the services and/or materials. The costs of the mediation shall be divided equally between the parties to the dispute.

The mediation session shall be private and shall be held in Durham County, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or materials being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Durham and the State of North



Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

21. **EXISTENCE.** CONSULTANT warrants that it is an individual/firm/corporation or otherwise legal entity duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this contract.
22. **CORPORATE AUTHORITY.** By execution hereof, the person signing for CONSULTANT below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of the CONSULTANT.
23. **SUCCESSORS AND ASSIGNS.** CONSUTANT shall not assign its interest in this Contract without the written consent of COUNTY. CONSULTANT has no authority to enter into contracts on behalf of COUNTY.
24. **NOTICES.** All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

**COUNTY OF DURHAM**  
**ATTN: PURCHASING DEPARTMENT**  
**4TH FLOOR, 200 EAST MAIN STREET**  
**DURHAM, NORTH CAROLINA 27701**

**CONSULTANT**  
**FREESE AND NICHOLS, INC.**  
**1017 MAIN CAMPUS DRIVE, SUITE 200**  
**RALEIGH, NORTH CAROLINA 27606**

25. **HEADINGS.** The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.
26. **GOVERNING LAW.** This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
27. **REQUIRED PROVISIONS FOR CONTRACTS/AGREEMENTS/GRANTS UTILIZING FEDERAL FUNDS.** Pursuant to the Federal Uniform Guidance Appendix II to 2 CFR Part 200, if Federal Funds are involved in this Contract/Agreement/Grant Agreement, by executing this Contract/Agreement/Grant Agreement, the Contractor/Vendor/Grantee, certifies that it agrees to and is in compliance with the provisions specified in Exhibit B – Federal Uniform Guidance Contract Provisions Certification.
28. **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) PROGRAM.** It is the policy of the County to provide minorities and women-owned businesses equal opportunity to participate in all aspects of the County's contracting programs, including but not limited to, the procurement of construction, goods and services consistent with law. The County has established an ordinance and implements an MWBE Program based on the ordinance, that promotes, increases and works towards eradicating the underutilization of minorities and women-owned businesses in the County's contracting programs. As part of the implementation of the MWBE Program, Contractors shall complete **Attachment 2 – MWBE Utilization Form**, to provide the percentage/dollar value being subcontracted to any minority or women-owned business being utilized on this contract. Attachment 2 is hereby incorporated herein and made a part of this contract.

**29. ENTIRE CONTRACT.** This contract, including Attachment 1 and Attachment 2, and if applicable Exhibit A and Exhibit B, shall constitute the entire understanding between COUNTY and CONSULTANT and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

**IN TESTIMONY WHEREOF,** the parties have expressed their agreement to these terms by causing this Consultant Contract to be executed by their duly authorized officer or agent.

DocuSigned by:  
By: Wendell M. Davis  
Wendell Davis, County Manager

Date of Signature: 9/24/2019

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

DocuSigned by:  
Susan Tezai  
Susan Tezai, Durham County Chief Financial Officer

**FRESE AND NICHOLS, INC.**

DocuSigned by:  
By: Bryan C. Janin  
Bryan Janin, Principal

Date of Signature: 9/23/2019

“ATTACHMENTS 1 & 2” to follow



## SCOPE OF SERVICES FORM

This Scope of Services is an integral part of this contract between the **COUNTY OF DURHAM** ("County"), and **FREES AND NICHOLS, INC.** ("Consultant"), which contract is dated **July 1, 2019**. Contractor agrees to provide services and/or materials pursuant to the provisions set forth below.

- I. **Background/Purpose:** The purpose and intent of this request is to establish a consulting contract with Freese and Nichols, Inc. for the provision of Project Management Services for the Snow Hill Road Pump Station Project per RFQ #: 19-040.
- II. **References:** The following documents are incorporated herein by reference to them:
  - RFQ # 19-040
  - Freese and Nichols Proposal and Rate Sheet
- III. **Work/Requirements:** Freese and Nichols will provide Design-Build RFQ Assistance, Evaluation and Selection of Design Builder, Preconstruction and Design Phase Services and Construction Administration for the Snow Hill Road Pump Station Project.
- IV. **Schedules/Timelines:** Estimated completion of the Snow Hill Road Pump Station is currently set for late 2021. Freese and Nichols will provide all listed services until full completion and start-up of the station.
- V. **Transmittal/Delivery/Accessibility:** The primary mode of transmittal will be through e-mail and through the submittal of paper copies of plans and specifications. Meetings shall primarily be held at the TWWTP, or other off-site locations deemed necessary to complete the work. Our primary contact at Freese and Nichols is Bryan Jann Phone: (919) 582-5856, E-mail: bcj@freese.com. Vince Chirichella, PE, Sr. Project Manager, Desk: (919) 560-9039, Cell: (919) 748-9300, E-mail: vchirichella@dconc.gov, will be the primary Durham County contact with Peri Manns, E&ES Deputy Director, Desk: (919) 560-7996, Cell: (919) 201-3358, E-mail: pmanns@dconc.gov, as the secondary contact.
- VI. **Payment:** Invoices and/or additional submittals shall be forwarded to County Primary Contact for review. Upon payment authorization, invoices will be paid net 30. Invoices and forms submitted **MUST** reference Durham County Funds Reservation Number assigned to this contract. Authorization of payments will be forwarded to the Finance Department dependent on receipt of all forms. The County may withhold payment if required reports or submittals are not received. For this work the consultant will be paid per submitted invoices, based on quoted rates, up to an annual total not to exceed of \$59,035.00, in accordance with Durham County Policies and Terms of Agreement following work completion. Invoices should be mailed to Durham County Utility Division – TWWTP, ATTN: Accounts Payable, 5926 Highway 55 East, Durham, NC 27713.

**Durham County  
Snow Hill Road Pump Station Owner's Advisor  
Proposal**

Durham County (County) is requesting Owner's Advisor assistance for the Snow Hill Road Pump Station during the Design Build process including RFQ, bidding, design and construction. Freese and Nichols, Inc. (FNI) will assist the County with these professional services as requested. A detailed scope of work is shown below:

**BASIC SERVICES:** Upon written authorization to proceed from the County, FNI shall perform professional engineering services for County related projects as described herein.

**A. Design-Build RFQ Assistance**

1. NC law (143-128.1A.(b)) requires the County establish in writing the criteria used for determining the circumstances under which the design-build method is appropriate for the project and such criteria, at a minimum, would address the six criteria listed in this section. FNI will prepare a memo to comply with this requirement. Revise and finalize memo based on comments received from review by County and County counsel.
2. Assist City Counsel in preparing the draft Design-Build Agreement. It is recommended that the County consider using an industry standard format such as the Design-Build Institute of America (DBIA) or the Engineers Joint Contract Document Committee (EJCDC).

**B. Evaluation and Selection of Design Builder**

1. FNI will develop and complete the SOQ compliance matrix for SOQ review as to meeting submittal requirements and to identify any deficiencies. FNI will review SOQs to provide assistance to selection committee, answer selection committee questions, etc. It is assumed that 5 SOQs will be received.
2. FNI will attend a meeting of the selection committee to review and rank the SOQs. It is anticipated that a selection committee consensus ranking will be used and that there will be one committee meeting. The SOQs will be evaluated, and the three most highly qualified Proposer shall be ranked.
3. FNI will prepare an agenda for interviews. FNI will attend up to three interviews lasting no more than 2 hours per interview over two days.
4. FNI will attend a meeting of selection committee to adjust any rankings based on interview results or rank the interviews if used as an evaluation criterion and make a recommendation as to the selected design-builder
5. It is assumed that the County will conduct Design-Build Agreement negotiations with the highest ranked proposer. It is assumed FNI will attend two one day negotiations sessions.

**C. Preconstruction and Design Phase Services**

1. FNI will provide a technical review of all submittals by the DB team. Technical reviews will include a review of the deliverable with respect to the City of Durham design criteria, along with State

requirements and generally accepted engineering practice. FNI will provide written comments to the County at each submittal. It is anticipated that submittals will be made at the 30%, 60% and 90% levels along with schedules and GMP estimates at each milestone. FNI will attend meetings to discuss the milestone deliverables

2. FNI will attend a one-day (8 hour) value engineering workshop with the DB team to discuss and evaluate opportunities for potential cost reductions and time savings resulting from Design-Builder review of 30% design complete.
3. FNI will attend meetings/conference calls to discuss schedule, project scope and quality and GMP estimates in between item1 above milestones. Included in this scope is 24 hours of effort to be used for this task. Attend meetings/conference calls to discuss schedule, project scope and quality and GMP estimates in between item1! above milestones
4. FNI will review and comment on 30%, and 60% design complete project schedule and GMP estimate. If Owner's budget is exceeded FNI will review Design-Builder recommendations for bringing project GMP estimate to within Owner's budget.
5. FNI will develop and negotiate the acceptance testing for the project.
6. FNI will review the risk management plan, quality assurance/quality control plan developed by the Design-Builder
7. FNI will review and negotiate the at the 90% complete milestone the GMP Proposal including GMP estimate, schedule and other supporting documentation. and negotiations
8. FNI's services do not include any services related to the procurement activities of the Design-Builder of subconsultants or subcontractors that would perform project work or services.

#### **D. Construction Administration**

FNI will assist the County with construction phase services as described below. FNI will endeavor to protect the County in providing these services however, it is understood that FNI does not guarantee the Design-Builder's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Design-Builder, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Design-Builder or any Subcontractor or Subconsultant. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

1. Establish communication procedures with the County and Design-Builder. FNI shall attend monthly meetings of construction progress. FNI will prepare Monthly Reports which will describe construction progress in general terms and summarize project costs, cash flow, construction schedule and pending and approved contract modifications. FNI will coordinate with the DB team during the construction phase as necessary. Included in this scope is 16 hours of effort to be used for calls, unplanned meetings, workshops, etc. It is assumed that the progress meetings will correspond with the site visits as noted below.
2. Make visits appropriate to the stage of construction to the site to observe the progress and the

quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the County against defects and deficiencies in the Design-Builders work s and will report any observed deficiencies to the County. A total of twelve (12) site visits is included in this scope.

3. Attend Substantial and Final Completion site visits to confirm requirements for Substantial and Final Completion have been achieved.
4. FNI will not review any payment applications or change orders.
5. Design-Build Report: NC law requires that public entities that contract with a design-builder shall report to the Secretary of Administration certain information listed in 143-64.31(b). This report is due no later than 12 months from the date the County takes beneficial occupancy of the project. FNI will prepare a draft report for review by the County and make changes based on one round of comments. At the appropriate time FNI will prepare a scope of work and fee for this report as a change order to this agreement.

**COMPENSATION:** Compensation to FNI shall not exceed Fifty-Nine Thousand Thirty-Five Dollars (\$59,035) without a written amendment. Compensation shall be broken down as follows:

- Design Build RFQ Assistance – \$3,100
- Evaluation and Selection of Design Builder – \$7,200
- Preconstruction and Design Phase Services – \$31,235
- Construction Administration - \$17,500

Compensation shall be based on the following schedule of charges:

**Schedule of Charges:**

<b><u>Position</u></b>	<b><u>Rate</u></b>
Professional - 1	107
Professional - 2	140
Professional - 3	146
Professional - 4	185
Professional - 5	215
Professional - 6	250
Construction Manager - 1	85
Construction Manager - 2	111
Construction Manager - 3	131
Construction Manager - 4	164
CAD Technician/Designer - 1	100
CAD Technician/Designer - 2	117
CAD Technician/Designer - 3	145
Corporate Project Support - 1	87
Corporate Project Support - 2	105
Corporate Project Support - 3	139
Intern/ Coop	53

**M/WBE PARTICIPATION:** FNI will utilize an M/WBE subconsultant (Cri-Tek) to assist with Technical Reviews with an anticipated fee of **\$15,000** or **25.4%** of the total fee.



### MWBE UTILIZATION FORM

This MWBE Utilization Form is an integral part of the contract between the County of Durham and Freese and Nichols, Inc. (Consultant), which contract is dated **July 1, 2019**. The purpose of this form is to assist in identifying minority participation associated with County contracts.

**Note: If Purchasing has already performed MWBE pre-award compliance during a bid process and/or BOCC contract approval, please attach the pre-award compliance form to this form and submit with the contract. Completing the remainder of this form will not be required.**

Description of Services/Goods: **Provision of Project Management Services for the Snow Hill Road Pump Station Project per RFQ #: 19-040.**

Contract Amount: **\$59,035.00** Contract Term: **July 1, 2019 – December 31, 2021**

Please check one:

- ☐ Contractor will provide 100% of the services/goods for this contract.
- ☐ Contractor will **subcontract** a percentage of the services/goods for this contract to a non-minority business enterprise or a non-profit.
- ☒ Contractor will **subcontract** a percentage of the services/goods for this contract to the minority-owned business enterprise(s) identified below.

Minority Business Enterprise Name, Address & E-Mail	Minority Category*	Description of Work	Percentage %	Dollar Value
CriTek		Technical Review Support	25.41%	\$15,000

**\*Minority Categories: Black/African American (B), Female (F), Hispanic (H), Asian American (A), American Indian (I)**

#### Durham County Goals for M/WBE Participation in the Procurement of Goods, Services and Construction

Categories	Construction	Architect/ Engineer	Services	Goods	MWBE % Availability (Median Availability)
Black American	14.6	9.8	10.9	2.8	10.4%
Asian American	1.3	3.0	1.1	.43	1.3%
Hispanic American	4.2	1.8	1.1	.43	1.5%
American Indian	.65	.75	1.0	.5	.70%
White Female	13.8	11.0	9.5	7.1	10.3%
<b>Overall MWBE Participation Goal</b>					<b>25.0%</b>

*This form shall accompany all contracts submitted to Purchasing.*