

CONTRACT FOR PROFESSIONAL SERVICES

Agreement for Drainage Consultant Services

This agreement is entered into this 10th day of May, 2011, and will be effective as of the date of final execution of this contract, between the COUNTY OF KANE with offices at 719 S. Batavia Avenue, Geneva, Illinois 60134 (the "*County*"), a body corporate and politic existing under the laws of the State of Illinois and a unit of local government under §1 of Article VII of the Illinois Constitution (Ill. Const., Art. VII, §1), and Huddleston McBride Land Drainage Company Rochelle, IL (the "*Consultant*"). For and in consideration of the mutual promises set forth herein, the parties agree as follows:

§ 1. Purpose of agreement

The County hereby retains the Consultant to provide support services as necessary to efficiently run the County's Drainage Programs as outlined below.

§ 2. Scope of services

The services to be provided by the Consultant (the "*Work*"), are as follows:

- A. Flood Event Assistance including but not limited to: relief efforts which may include providing and maintaining pumping equipment, arranging and coordinating underground contractors and material suppliers, negotiating costs, and 24-7 on-call assistance; assisting County staff in documenting flooding at projects around the County; removing blockages and emergency repairs; documentation of high water elevations; assisting the public by answering questions and providing resources for flood relief.
- B. Drainage Complaint Assistance including but not limited to: responding to drainage complaints on an on-call basis; providing resident with contacts and resources; providing residents information about Illinois Drainage Law.
- C. Drainage Project Technical Assistance including but not limited to: providing drain tile mapping of the area; performing field investigations with Water Resource staff; developing exhibits with air photos and drainage patterns for visual aids during meetings; working with Water Resource staff to develop options for project; working with Water Resource staff to develop cost-estimates; assist Water Resource staff in evaluating engineering scopes for RFP requests; working collaboratively with Engineers to provide background on projects and reviewing design plans for constructability; assisting engineers with design of groundwater control systems that will be low maintenance in the future based on actual experiences Consultant has had in the field; and presentation assistance at resident meetings.
- D. Drainage Project Construction Assistance including by not limited to: pre-bid field walk to review engineering plans for constructability; evaluation of bids received and qualification of bidders; negotiation assistance; pre-construction attendance; part-time construction observation on small drainage project to ensure proper adherence to plans; documentation of work completed and

communication to Water Resource staff regarding changes, improvements or obstacles occurring during construction; provide suggestions and recommendations for project improvements; work with local suppliers on changes and expedited equipment orders; oversight of contracted field observers on larger projects that require full time inspection to ensure compliance with County standards and expectations of full time observers; pay request review assistance including providing options on extras and changes in scope; final walkthrough and punchlist assistance if not provided by full time contracted observer on larger projects.

- E. Drainage System and Drain Tile Location, Investigation and Probing Services. Due to the equipment and crew requirements for this task, specific projects requiring these services shall be contracted with Huddleston-McBride separately.

§ 3. Term of this agreement

The term of this agreement will commence as of the date hereof and continue, unless earlier terminated in accordance herewith, until the Work is completed.

- (a) The Work will include any and all services performed during the 2011 budget cycle. This contract may be renewed, upon approval by the Purchasing Department, for an additional 12 month period.

§ 4. Relationship of parties

The Consultant will serve as the County's drainage consultant in the performance of the Work. The relationship between the parties is that of a buyer and seller of professional services and as such the Consultant is an independent contractor of the County in the performance of the Work and it is understood that the parties have not entered into any joint venture or partnership. The Consultant is not an employee or the agent of the County for any purpose.

§ 5. Compensation

- (a) The County will pay the Consultant an amount not to exceed \$75,000 for which the Consultant will fully complete the Work. The Consultant will submit to the County an itemized monthly invoice reflecting the work completed within the preceding calendar month and the time spent thereon. The monthly invoice will also include a summary of all previous invoices up to, and including, the invoice for the current month. The Work will be billed at the hourly rates set forth in **Exhibit 1**. The County will pay each such invoice within 45 days of its receipt.

§ 6. Terms and conditions

- (a) The Director of the Kane County Water Resources Division (The "**Director**"), or his written designee, shall act as the County's representative (the "Client") with respect to the Work and shall transmit to and receive from the Consultant information with respect to the Work. The Consultant shall coordinate all work through the Client and shall report results of all work directly to the Client.

- (b) The Director may, by written order, make changes in specific work items if such changes are within the scope of services set forth above. If any such change is not within the scope of services, the Consultant will so notify the Director and will submit a proposed change order reflecting an increase (or decrease) in the work. Hourly rates for additional work will be those set forth in **Exhibit 1**. No such change order will be effective to modify this agreement unless it has first been reduced to writing and approved by all undersigned parties.
- (c) The County may, anytime and without cause, upon notice to the Consultant terminate this agreement before completion of the Work. Upon termination, the Consultant will cease all work under this agreement and will turn over to the County all information, records, documents, data, property, publications or other material theretofore received or prepared by the Consultant under or resulting from this agreement, all of which will become the property of the County. The Consultant will submit a final invoice for all work done through the date of termination which will be paid within 45 days of its receipt. In the event of termination, only actual time spent and expenses incurred in the performance of the Work prior to termination will be compensated. The County will have no liability for lost profits, overhead or other consequential or incidental damages. In the event of termination, the County will be free to abandon the work or retain another consultant to complete the Work.
- (d) The obligations of the County under this agreement are contingent upon the prior appropriation of funds by the Kane County Board if applicable.
- (e) The Consultant will maintain books, records, documents, time sheets and other evidence pertinent to its performance of the Work according to generally accepted accounting principles and practices consistently applied. The County or its authorized representatives will have access to such books, records, documents and other evidence for inspection, audit, and copying. The Consultant will provide appropriate facilities for such access and inspection during normal business hours.

§ 7. Ownership of Documents and Confidentiality

- (a) All documents, including all original drawings, specifications, tables and data prepared or collected in the course of the Work are and remain the property of the County; shall be maintained as confidential property of the County, shall not be disclosed in whole or in part, to any non-parties to this agreement except at the direction of the County. All data obtained from the County, including digital mapping information, is to be used solely for the purpose of the Work, and shall not be retained by the Consultant for use in any other manner.

§ 8. Responsibility of Consultant

The Consultant shall perform the Work in accordance with generally accepted and currently recognized practices and principles applicable to the performance thereof and in a manner consistent with that level of care and skill ordinarily exercised by professionals currently performing such work in the same locality under similar conditions. The Consultant represents and warrants that it has thoroughly reviewed the Work; that it is thoroughly familiar with the field of knowledge bearing upon the performance of the Work; that it has any licenses, permits or approvals necessary or appropriate to perform the Work; and that it can produce the Work within the term of this agreement and for the compensation stated herein.

§ 9. Indemnity

The Consultant shall indemnify, defend (with counsel reasonably satisfactory to those parties to be defended), and hold the County, its elected officials, the Committee, the Director, and their respective agents and employees, harmless from any and all claims, demands, liabilities, damages, loss, cost or expense for or on account of any injury or damage which may arise or which may be alleged to have arisen out of or in connection with, or as a result of any negligent acts, errors and/or omissions of the Consultant, its subcontractors, and their respective employees and agents, in performing the Work, including, but not limited to, claims for releases or disposal of hazardous substances or wastes under CERCLA, RCRC, or any similar federal or state environmental law or regulation. Except as to professional liability, such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided.

§ 10. Insurance

The Consultant will obtain prior to the commencement of the Work and will maintain for a minimum of 3 years following completion of the Work the following insurance coverage:

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| (a) Workers Compensation | Shall be in accordance with the provisions of the laws of the State of Illinois |
| (b) General Liability | \$2,000,000 combined single limit (or equivalent); |
| (c) Automobile Liability | \$1,000,000 combined single limit (or equivalent); |
| (d) Excess Liability | \$2,000,000 each occurrence; and |
| (e) Professional Liability | \$1,000,000 per claim. |

Prior to commencement of the Work, the Consultant will furnish the County with a certificate of insurance evidencing the coverage listed above, which names the County as an additional insured on all policies except Workmen's Compensation and Professional Liability, and provides that the County will receive not less than 30 days' prior written notice of any cancellation of or material change in the policy.

§ 11. Equal Employment Opportunity

Section 6.1 of the Illinois Department of Human Rights Rules and Regulations is hereby incorporated herein by this reference as though fully set forth.

§ 12. No subcontracts

The Consultant will be held responsible for the performance of the Work. No part of the Work may be the subject of a subcontract between the Consultant and any other person without the prior written consent of the Director.

§ 13. Notice

Any notice, invoice, certification or communication required or permitted hereunder shall be sufficiently given if served personally, sent *via* fax, or sent by first class mail, postage prepaid to the Kane County Water Resources Division, attention Paul Schuch, Director, Kane County Government Center, 719 S. Batavia Ave., Geneva, IL 60134, (Fax No. 630/208-3837).

Notice *via* fax shall be effective as of the date and time set forth on the fax transmittal sheet produced by the sending fax machine. Notice by first class mail shall be effective four days after mailing.

§ 14. Miscellaneous

- (a) This agreement constitutes the entire agreement between the parties and supersedes any prior agreement relating to the subject matter hereof. This agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.
- (b) The agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any action brought under or which relates to this agreement shall be brought in Kane County, Illinois.
- (c) This agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns, provided, however, that neither party may assign this agreement without the prior written consent of the other.
- (d) The waiver by one party of any breach of this agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance and shall not be deemed to be a waiver of any future breach or a waiver of any provision of this agreement.
- (e) Nothing in this agreement shall be construed as creating any personal liability on the part of any officer, employee or agent of any public body that may be a party to this agreement, nor shall it be construed as giving any rights or benefits under this agreement to anyone other than the parties hereto.

- (f) All exhibits referred to in this agreement are attached and by this reference incorporated herein as though fully set forth.
- (g) This agreement may be executed in any number of counterparts, all such counterparts taken together constituting but one and the same agreement.
- (h) If any action is filed under or relating to this agreement, the non-prevailing party (as determined by the Court) shall pay, in addition to all other amounts which the non-prevailing party may be ordered to pay, the prevailing party's costs, expenses and reasonable attorney's fees.

The County of Kane



Karen McConnaughay
County Board Chairman

6-27-11
Date

**Huddleston-McBride Land Drainage
Company**



Name THOMAS L. HUDDLESTON III
Title

6/7/11
Date

EXHIBIT 1
(Billing Rates)

See attached Billing Rates



- 116 W. Main St., No. 208, St. Charles, Il., 60174
- 9504 East Fowler Rd., Rochelle, Il., 61068
Phone 815-562-6007 Fax 815-562-6557
T. Huddleston mobile 815-757-6007
Email: huddmac@aol.com

April 7, 2011 billing rates,
Submitted by: Tom Huddleston

Project Consulting Services Hour Basis :

(T.L. Huddleston) is calculated on an hourly basis of \$90.00 and includes client contact and consultation, existing conditions research, onsite testing including tile location, elevation survey and pipe video, project analysis including recommendations for improvement, auto cad drafting and consultation with Kane water resource staff members. Additional services include drainage construction observation, recommendations for "in progress" change or revision, and record construction notes.

Drainage Investigation and Emergency Repair Crew Hour Basis :

Calculated on an hourly crew basis of \$280.00 and includes a full drain tile investigation / repair crew and will additionally consist of (4) man ground laborers, (1) operator, 4-wheel drive loader backhoe w/ transport, electronic and manual investigation equipment, pipeline video equipment, incidental pipe repair materials, field staking materials, flood water pumping, field supervision and miscellaneous support equipment. Daily hours are computed by home port to home port.

Investigation & Reconnaissance Crew Hour Basis :

Calculated on a hourly basis of \$190.00 including a full investigation crew and will additionally consist of (4) man ground laborers, electronic and manual investigation equipment, hand probe transects, surface evaluation, pipeline video equipment, field staking materials, field supervision, and miscellaneous support equipment. Daily hours are computed by home port to home port.