



- B. All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant who, in the opinion of Drainage District, is incompetent or by his conduct becomes detrimental to the project shall, upon request of Drainage District, immediately be removed from association with the project.

**Section 3. Compensation and Payment**

- A. Consultant's fees shall be calculated at the rates set forth in the attached Attachment B. The Maximum Compensation for the performance of Services within the Scope of Work described in Attachment A is fifty thousand dollars and 00/100 (\$50,000.00). In no case shall the amount paid by Drainage District under this Agreement exceed the Maximum Compensation without an approved change order.
- B. All performance of the Scope of Work by Consultant including any changes in the Scope of Work and revision of work satisfactorily performed will be performed only when approved in advance and authorized by Drainage District.
- C. Drainage District will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Work, Consultant shall submit to Drainage District two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to Drainage District. Drainage District shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. Drainage District shall pay each such approved invoice within thirty (30) calendar days. Drainage District reserves the right to withhold payment pending verification of satisfactory work performed.

**Section 4. Limit of Appropriation**

- A. Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that Drainage District shall have available the total maximum sum of fifty thousand dollars and 00/100 (\$50,000.00), specifically allocated to fully discharge any and all liabilities Drainage District may incur.
- B. Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that Drainage District may become liable to pay to Consultant shall not under any conditions, circumstances, or interpretations thereof exceed fifty thousand dollars and 00/100 (\$50,000.00).

**Section 5. Term**

The term of this Agreement shall begin on October 1, 2018, and end on September 30, 2019. Contractor shall complete the tasks described in the Scope of Work within this time or within such additional time as may be extended by the Drainage District.

**Section 6. Modifications and Waivers**

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

**Section 7. Termination**

- A. Termination for Convenience: Drainage District may terminate this Agreement at any time upon thirty (30) days written notice.
- B. Termination for Default
  - 1. Drainage District may terminate the whole or any part of this Agreement for cause in the following circumstances:
    - a. If Consultant fails to perform services within the time specified in the Scope of Work or any extension thereof granted by the Drainage District in writing;
    - b. If Consultant materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to Drainage District's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from Drainage District specifying such breach or failure.
  - 2. If, after termination, it is determined for any reason whatsoever that Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Drainage District in accordance with Section 7A. above.

- C. Upon termination of this Agreement, Drainage District shall compensate Consultant in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to Drainage District. Consultant's final invoice for said services will be presented to and paid by Drainage District in the same manner set forth in Section 3 above.
- D. If Drainage District terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Consultant.

**Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part of its work under this Agreement, shall become the property of Drainage District upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Consultant shall promptly furnish all such data and material to Drainage District on request.

**Section 9. Inspection of Books and Records**

Consultant will permit Drainage District, or any duly authorized agent of Drainage District, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Work. Drainage District's right to inspect survives the termination of this Agreement for a period of four years.

**Section 10. Insurance**

- A. Prior to commencement of the Services, Consultant shall furnish Drainage District with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to Drainage District. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by Drainage District. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
  - 1. Workers Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
  - 2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
  4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
  5. Professional Liability insurance with limits not less than \$1,000,000.
- B. Drainage District, Fort Bend County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Consultant shall contain a waiver of subrogation in favor of Drainage District, Fort Bend County and members of Commissioners Court.
- C. If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Agreement and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Agreement is completed.
- D. Consultant shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend Drainage District.
- E. No cancellation of or changes to the certificates, or the policies, may be made without sixty (60) days prior, written notification to Fort Bend Drainage District.
- F. Approval of the insurance by Fort Bend Drainage District shall not relieve or decrease the liability of the Consultant.

#### **Section 11. Indemnity**

**CONSULTANT SHALL INDEMNIFY AND DEFEND DRAINAGE DISTRICT AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES.**

## **Section 12. Confidential and Proprietary Information**

- A. Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to Fort Bend County or Drainage District. Any and all information of any form obtained by Consultant or its employees or agents from Fort Bend County or Drainage District in the performance of this Agreement shall be deemed to be confidential information of Fort Bend County and Drainage District ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.
- B. Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to Drainage District hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist Drainage District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise Drainage District immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with Drainage District in seeking injunctive or other equitable relief in the name of Drainage District or Consultant against any such person. Consultant agrees that, except as directed by Drainage District, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at Drainage District's request, Consultant will promptly turn over to Drainage District all documents, papers, and other matter in Consultant's possession which embody Confidential Information.
- C. Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to Drainage District that is inadequately compensable in damages. Accordingly, Drainage District may seek and

obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of Drainage District and are reasonable in scope and content.

- D. Consultant in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Consultant expressly acknowledges that Drainage District is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, Drainage District will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to Drainage District by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

### **Section 13. Independent Contractor**

- A. Consultant agrees that in the performance of work or services hereunder, Consultant shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.
- B. Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of Drainage District and shall not be entitled to any of the privileges or benefits of Drainage District employment.

### **Section 14. Notices**

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: **Board of Directors**  
**Fort Bend County Drainage District**  
ATTN: Chief Engineer, Mark Vogler, PE  
Fort Bend County Drainage District  
P.O. Box 1028  
Rosenberg, Texas 77471

With a copy to: **Fort Bend County**  
Attn: County Judge  
401 Jackson Street  
Richmond, Texas 77469

Consultant: **Freese and Nichols, Inc.**  
Stormwater Management  
Héctor Olmos, P.E., CFM  
10497 Town and Country Way, Suite 600  
Houston, TX 77024

C. Notice is effective only if the party giving or making the Notice has complied with subsections 14 A. and 14 B. and if the addressee has received the Notice. A Notice is deemed received as follows:

1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

#### **Section 15. Compliance with Laws**

Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by Drainage District, Consultant shall furnish Drainage District with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Section 16. Performance Warranty**

- A. Consultant warrants to Drainage District that Consultant has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Consultant will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
- B. Consultant warrants to Drainage District that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Attachment A.

**Section 17. Assignment and Delegation**

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.
- B. Neither party may delegate any performance under this Agreement.
- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

**Section 18. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the Fort Bend County's or Drainage District's sovereign immunity.

**Section 19. Successors and Assigns**

Drainage District and Consultant 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 the other party, in respect to all covenants of this Agreement.

**Section 20. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section 21. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 22. Publicity**

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

**Section 23. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 24. Conflict**

In the event there is a conflict between this Agreement and the attached Attachments, this Agreement controls.

**Section 25. Certain State Law Requirements for Contracts**

25.1 Agreement to Not Boycott Israel Chapter 2270 Texas Government Code: By signature below, Consultant verifies Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

25.2 Texas Government Code Section 2251.152 Acknowledgment: By signature below, Consultant represents pursuant to Section 2252.152 of the Texas Government Code, that Consultant is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts.

FORT BEND COUNTY DRAINAGE DISTRICT

FREESE & NICHOLS, INC.

\_\_\_\_\_  
Robert E. Hebert, County Judge

Michael W. Reedy  
Authorized Representative – Signature

\_\_\_\_\_  
Date

Michael V. Reedy  
Authorized Representative – Name

ATTEST:

Vice President  
Title

\_\_\_\_\_  
Laura Richard, County Clerk

9/18/18  
Date

#### AUDITOR'S CERTIFICATE

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

\_\_\_\_\_  
Robert E. Sturdivant, County Auditor

ATTACHMENT A: SCOPE OF WORK  
ATTACHMENT B: COMPENSATION

# **ATTACHMENT A**

## **Scope of Work**

**Attachment A  
Scope of Work  
Drainage Review Assistance Services**

Freese and Nichols, Inc. (FNI) (Consultant) will provide assistance in review of drainage report submittals for Fort Bend County Drainage District (District).

**TASK 1. MANAGEMENT.**

Consultant will manage the work outlined in this scope to help facilitate the efficient use of Consultant's and District's time and resources. Consultant will manage change, communicate, coordinate internally and externally as needed, and address issues with the District's Project Manager and others as necessary to make progress on the work.

1.1. Managing the Team

- Lead, manage and direct team activities
- Establish quality control practices in performance of the work
- Communicate internally among team members
- Task and allocate team resources

1.2. Communications and Reporting

- The Consultant will maintain a log of all drainage reviews in a manner approved by the District's Project Manager. The log will include project name and number, dates of receipt of reports, review costs, name of review engineer, date of completion of review, and status of review.
- At the request of the District's Project Manager, the Consultant will attend meetings with the Developer and Developer Engineer to discuss comments. The Consultant will not discuss review comments or meet with Developers or Design Engineers concerning the review project outside of District meetings unless requested by District Staff.
- Prepare invoices, in accordance with **Attachment B** to this Standard Agreement and submit monthly in the format requested by the District.

**DELIVERABLES**

- A. Drainage Review Logs
- B. Digital copies of all correspondence with Applicants.
- C. Monthly invoices.
- D. Monthly progress reports.

## **TASK 2. TASK ORDER IMPLEMENTATION**

### **2.1 Initiate Task Order Request**

The District Project Manager (or designated representative), will provide Consultant with digital copies of all submitted materials. The District will specifically request the type of review needed. The files will include the information submitted to the District such as completed checklists, plans, computations, reports, and computer models. The District Project Manager should also provide additional background information needed by the Consultant such as existence of known downstream drainage problems and flooding.

### **2.2 Initial Review**

Drainage reports and applicable models will be reviewed for conformance with current Drainage Criteria Manual for Fort Bend County. Comments will be summarized in a transmittal letter. The Consultant will be available to discuss comments with the District Project Manager as needed. The District Project Manager will be responsible for providing comments to the Developer and Design Engineer. Initial reviews shall be completed within 14 calendar days of notification from District Project Manager.

### **2.5 Subsequent Review**

Up to one (1) additional review of revised drainage reports and models will be performed by the Consultant, additional reviews are not included in this contract. The review will be completed within 14 calendar days of notice of resubmittal.

If initial comments issued during the initial review have been addressed in the subsequent submittal, Consultant will prepare a letter notifying the District Project Manager that the submittal complies with current drainage criteria for Fort Bend County.

If initial comments are not fully addressed in the subsequent submittal, comments will be issued in the same manner as for initial reviews.

# **ATTACHMENT B**

## **Compensation**

**Attachment B**  
**Compensation**  
**Drainage Review Assistance Services**  
Times and Materials with Rate Schedule Project

Consultant will be compensated for performing services enumerated in **Attachment A** as follows:

<b>Position</b>	<b>Maximum Hourly Rate</b>
PRINCIPAL	\$300.00
GROUP MANAGER	\$285.00
LEAD TECHNICAL PROFESSIONAL	\$260.00
ENGINEERING TASK LEADER	\$185.00
ENGINEER VIII	\$260.00
ENGINEER VII	\$249.00
ENGINEER VI	\$238.00
ENGINEER V	\$200.00
ENGINEER IV	\$144.00
ENGINEER III	\$132.00
ENGINEER II	\$120.00
ENGINEER I	\$115.00
CADD DESIGNER	\$151.00
TECHNICIAN IV	\$122.00
TECHNICIAN III	\$102.00
TECHNICIAN II	\$ 84.00
TECHNICIAN I	\$ 70.00
GIS ANALYST VI	\$165.00
GIS ANALYST V	\$138.00
GIS ANALYST IV	\$125.00
GIS ANALYST III	\$114.00
GIS ANALYST II	\$ 85.00
GIS ANALYST I	\$ 72.00
ENVIRONMENTAL SCIENTIST VIII	\$246.00
ENVIRONMENTAL SCIENTIST VII	\$235.00
ENVIRONMENTAL SCIENTIST VI	\$192.00
ENVIRONMENTAL SCIENTIST V	\$167.00
ENVIRONMENTAL SCIENTIST IV	\$140.00
ENVIRONMENTAL SCIENTIST III	\$109.00
ENVIRONMENTAL SCIENTIST II	\$ 92.00
ENVIRONMENTAL SCIENTIST I	\$ 77.00
REGISTERED PROFESSIONAL LAND SURVEYOR	\$210.00
SURVEY TECHNICIAN	\$110.00
SURVEY CADD	\$90.00
3-MAN SURVEY CREW	\$250.00
ADMINISTRATIVE ASSISTANT/CLERICAL SUPPORT	\$ 79.00
OPERATIONS ANALYST/ACCOUNTING SPECIALIST	\$125.00
PROJECT CONTROL SPECIALIST II / CONTRACT ADMIN	\$ 99.00
CO-OP/INTERN	\$ 60.00

1. Personnel Time: Personnel time shall be compensated based upon hours worked directly in performing the Project multiplied by the appropriate labor rate for the Consultant's team member performing the work. Labor rate as presented in the rate schedule table is the rate for each labor category performing the work and includes all direct salaries, overhead, and profit.
2. Hourly rate will be adjusted annually from the date of the executed contract.
3. It is expressly understood that the Consultant shall neither seek reimbursement nor will the Owner be obligated to pay or reimburse Consultant for normal business expenses related to the project. Normal business expenses include, but are not limited to mileage, mail, supplies, printing and reproduction services, other direct expenses associated with delivery of the work; plus applicable taxes.