

**STATE OF TEXAS** §  
§  
**COUNTY OF FORT BEND** §

## AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

(Drainage and Detention Analysis – Rohan and Benton Rd)

This Agreement for Professional Engineering Services ("Agreement") is made and entered into by and between the Fort Bend County Drainage District ("District"), a special district organized under the laws of the state of Texas, and Freese and Nichols, Inc. ("Engineer"), a Texas corporation. District and Engineer may be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, District is a Special District created under Chapter 6604 of the Texas Special District Local Laws Code for the purpose of reclamation and drainage of the District's overflowed lands and other lands needing drainage in Fort Bend County; and

WHEREAS, Engineer is a professional engineering firm which provides drainage and detention analysis services in the Greater Houston Area; and

WHEREAS, District desires for Engineer to provide professional engineering services for the drainage and detention analysis of Rohan Road and Benton Road; and

WHEREAS, Engineer represents that it is qualified and desires to perform such services for District; and

WHEREAS, this Agreement has been determined by the governing body of District to be necessary to carry out the purposes of the District and is authorized by Section 6604.051 of the Texas Special District Local Laws Code; and

WHEREAS, management and control of the District is administered by the Fort Bend County Commissioners Court pursuant to Section 6604.051 of the Texas Special District Local Laws Code; and

WHEREAS, pursuant to the requirements of Chapter 2254 of the Texas Government Code, District has determined that Engineer is the most highly qualified provider of such professional services and the Parties have negotiated a fair and reasonable price for the same; and

WHEREAS, this Agreement is not subject to competitive bidding requirements under Section 262.023 of the Texas Local Government Code because this Agreement is for professional engineering services and may not be competitively bid pursuant to Chapter 2254 of the Texas Government Code.

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

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
2. **Scope of Services.** Engineer shall render services to District as provided in Engineer's Proposal dated October 31, 2024 attached hereto as "Exhibit A" and incorporated herein by reference (the "Services").
3. **Time for Performance.** Time for performance for the Services provided under this Agreement shall begin with Engineer's receipt of Notice to Proceed and shall end no later than September 30, 2025. Engineer shall complete such tasks described in the Scope of Services, within this time or within such additional time as may be extended by District.
4. **Compensation and Payment Terms.**

Engineer's fees for the Services shall be calculated at the rate(s) set forth in Exhibit "A" attached hereto. The Maximum Compensation to Engineer for the Services performed under this Agreement is One Hundred Twenty Thousand and 00/100 Dollars (\$120,000.00) In no event shall the amount paid by District to Engineer under this Agreement exceed said Maximum Compensation without an approved change order.

- (a) Engineer understands and agrees that the Maximum Compensation stated is an all-inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated in the attached Exhibit "A."
- (b) District will pay Engineer based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Engineer shall submit to District staff person designated by the District, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to District. Engineer shall submit invoices no more frequently than on a monthly basis. 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. District shall pay each such approved invoice within thirty (30) calendar days.
- (c) Accrual and payment of interest on any overdue payments assessed by Engineer, if any, shall be governed by Chapter 2251 of the Texas Government Code.
- (d) Engineer understands and agrees that District's obligation to make any payment(s) hereunder is dependent upon Engineer's completion of the Services in a timely, good, and professional manner and in accordance with the

performance representations made in Section 25 of this Agreement. Therefore, District reserves the right to withhold payment pending verification of satisfactory work performed.

5. **Limit of Appropriation.** Engineer understands and agrees that the Maximum Compensation for the performance of the Services within the Scope of Services described in Section 2 above is \$120,000.00. In no event shall the amount paid by District under this Agreement exceed the Maximum Compensation without a District approved change order. Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that District shall have available the total maximum sum of \$120,000.00 specifically allocated to fully discharge any and all liabilities District may incur under this Agreement. Engineer does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total Maximum Compensation that Engineer may become entitled to and the total maximum sum that District may become liable to pay Engineer under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed \$120,000.00.
6. **Non-appropriation.** Engineer understands and agrees that in the event no funds or insufficient funds are appropriated by the District under this Agreement, District shall immediately notify Engineer in writing of such occurrence and the Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were received or made without penalty, liability or expense to the District. In no event shall said termination of this Agreement or District's failure to appropriate said funds be deemed a breach or default of this Agreement or create a debt by District in any amount(s) in excess of those previously funded.
7. **Taxes.** Engineer understands and agrees that District is a governmental entity and political subdivision of the state of Texas, and as such, is exempt from payment of any sales and use taxes. District shall furnish evidence of its tax-exempt status upon written request by Engineer.
8. **Insurance.** Prior to commencement of the Services, Engineer shall furnish 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 District. Engineer shall provide certified copies of insurance endorsements and/or policies if requested by District. Engineer 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. Engineer shall obtain such insurance written on an Occurrence form from such companies having Best's 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:

- (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) Professional Liability insurance with limits not less than \$1,000,000.

District and members of the Fort Bend County 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 Engineer shall contain a waiver of subrogation in favor of District.

If required coverage is written on a claims-made basis, Engineer warrants that any retroactive date applicable to coverage under the policy precedes the Effective Date of this Agreement and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Agreement is completed.

Engineer 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 District.

No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to District.

Approval of the insurance by District shall not relieve or decrease the liability of the Engineer.

9. **Indemnity.** PURSUANT TO SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS DISTRICT, ITS OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY, AND COSTS, INCLUDING THE REIMBURSEMENT OF REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ENGINEER OR ENGINEER'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL. IN ADDITION, ENGINEER SHALL FURTHER PROCURE AND MAINTAIN LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 8 OF THIS AGREEMENT.

ENGINEER SHALL TIMELY REPORT TO DISTRICT ALL SUCH MATTERS ARISING UNDER THE INDEMNITY PROVISIONS ABOVE. UPON THE RECEIPT OF ANY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN, OR JUDGMENT, AND NO LATER THAN THE FIFTEENTH DAY OF EACH MONTH, ENGINEER SHALL PROVIDE DISTRICT WITH A WRITTEN REPORT ON EACH MATTER, SETTING FORTH THE STATUS OF EACH MATTER, THE SCHEDULE OR PLANNED PROCEEDINGS WITH RESPECT TO EACH MATTER, AND THE COOPERATION OR ASSISTANCE, IF ANY, OF DISTRICT REQUIRED BY ENGINEER IN THE DEFENSE OF EACH MATTER. IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES AS TO WHETHER A CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN, OR JUDGMENT APPEARS TO HAVE BEEN CAUSED BY OR APPEARS TO HAVE ARISEN OUT OF OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ENGINEER, OR ITS AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH ENGINEER EXERCISES CONTROL, ENGINEER SHALL, NEVERTHELESS, FULLY DEFEND SUCH CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN, OR JUDGMENT UNTIL AND UNLESS THERE IS A DETERMINATION BY A COURT OF COMPETENT JURISDICTION THAT SAID ACTS AND/OR OMISSIONS OF ENGINEER ARE NOT AT ISSUE IN THE MATTER.

THE INDEMNITY PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT HOWEVER CAUSED, AND NO PAYMENT, PARTIAL PAYMENT, OR ISSUANCE OF CERTIFICATION OF COMPLETION OF THE SERVICES UNDER THIS AGREEMENT BY DISTRICT, WHETHER IN WHOLE OR IN PART, SHALL WAIVE OR RELEASE ANY OF THE PROVISIONS OF THIS SECTION.

10. **Public Information Act.** Engineer expressly acknowledges and agrees that District is a public entity and as such, is subject to the provisions of the Texas Public Information Act under Chapter 552 of the Texas Government Code. In no event shall District be liable to Engineer for release of information pursuant to Chapter 552 of the Texas Government Code or any other provision of law. Except to the extent required by law or as directed by the Texas Attorney General, District agrees to maintain the confidentiality of information provided by Engineer expressly marked as proprietary or confidential. District shall not be liable to Engineer for any disclosure of any proprietary or confidential

information if such information is disclosed under Texas law or at the direction of the Texas Attorney General. Engineer further acknowledges and agrees that the terms and conditions of this Agreement are not proprietary or confidential information.

11. **Compliance with Laws.** Engineer shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, and the 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. Engineer, in providing all services hereunder, further agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
12. **Independent Contractor.** In the performance of work or services hereunder, Engineer 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 Engineer. Engineer 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 District and shall not be entitled to any of the privileges or benefits of District employment.
13. **Use of Customer Name.** Engineer may use District's name without District's prior written consent only in Engineer's customer lists. Any other use of District's name by Engineer must have the prior written consent of District.
14. **District/District Data.** Nothing in this Agreement shall be construed to waive the requirements of Section 205.009 of the Texas Local Government Code.
15. **Personnel.** Engineer represents that it presently has, or is able to obtain adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Engineer shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of District, to perform the Services when and as required and without delays.

All employees of Engineer shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee or agent of Engineer who, in District's opinion, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement, shall, upon request of District, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at District's facilities, Engineer shall comply with, and will require that all Engineer's Personnel comply with, all applicable rules, regulations and known policies of District that are communicated to Engineer in writing, including security procedures concerning systems and data and remote access thereto, building security

procedures, including the restriction of access by District to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

16. **Confidential and Proprietary Information.** Engineer 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 District. Any and all information of any form obtained by Engineer or its employees or agents from District in the performance of this Agreement shall be deemed to be confidential information of District ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Engineer 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 Engineer) publicly known or is contained in a publicly available document; (b) is rightfully in Engineer'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 Engineer who can be shown to have had no access to the Confidential Information.

Engineer agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Engineer 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 District hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Engineer shall use its best efforts to assist District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Engineer shall advise District immediately in the event Engineer 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 Engineer will at its expense cooperate with District in seeking injunctive or other equitable relief in the name of District or Engineer against any such person. Engineer agrees that, except as directed by District, Engineer 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 District's request, Engineer will promptly turn over to District all documents, papers, and other matters in Engineer's possession which embody Confidential Information.

Engineer 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 District that is inadequately compensable in damages. Accordingly, 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. Engineer acknowledges

and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of District and are reasonable in scope and content.

Engineer in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

17. **Ownership and Reuse of Documents.** All work product and data produced or developed under this Agreement by Engineer including any documents, data, notes, reports, research, graphic presentation materials, and any other related material (collectively, "Materials"), shall at all times be the property of District. District, at all times, shall have a right of access to the Materials. Engineer shall promptly furnish and deliver all such Materials to District on request. Notwithstanding the foregoing, Engineer shall bear no liability or responsibility for Materials that have been modified post-delivery to District or used by District for a purpose other than that for which they were prepared under this Agreement.
18. **Inspection of Books and Records.** Engineer shall permit District, or any duly authorized agent of District, to inspect and examine the books, records, information, and documentation (collectively, "Records") of Engineer which relate to the Services provided under this Agreement for the purposes of making audits, examinations, excerpts, copies, and transcriptions. Engineer shall maintain all such Records in a readily available state and location, reasonably accessible to District or their authorized representatives. District's right to inspect such books and records shall survive the termination of this Agreement for a period of four (4) years, or until any litigation concerning any of the Services has been satisfactorily resolved, whichever occurs later. **ENGINEER SHALL NOT DESTROY OR DISCARD ANY RECORDS REASONABLY RELATED TO THIS AGREEMENT OR THE SERVICES, UNLESS THE TIME PERIOD FOR MAINTAINING THE SAME HAS EXPIRED.**
19. **Termination.**
  - (a) Without Cause. District, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, without cause, upon thirty (30) days prior written notice to Engineer.
  - (b) With Cause. District, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, with cause, for any of the following reasons, each of which shall constitute a material breach and "Default" of the Agreement:
    - (1) Engineer fails to perform any portion of the Scope of Services within the timeframe(s) provided under this Agreement.



- (2) Engineer fails to comply with District's documentation and reporting requirements, terms and requirements of this Agreement, or applicable federal, state, or local laws and regulations.
  - (3) Non-performance and suspension of the Agreement by Engineer that exceeds thirty (30) calendar days due to Force Majeure.
  - (4) Engineer fails to perform any obligation under this Agreement or as required by law, ordinance, or regulation and such failure creates an imminent threat to the public health and/or safety.
  - (5) Engineer otherwise 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.
  - (6) District shall notify Engineer in writing of the alleged Default in reasonable detail ("Notice"). Upon receipt of said Notice, Engineer shall have opportunity to cure such Default within the time specified in the Notice by District. If Engineer fails to cure such Default within such time, and to the reasonable satisfaction of District, then District may elect to terminate this Agreement for cause.
  - (7) If, after termination of the Agreement by District for cause, it is determined for any reason whatsoever that Engineer was not in Default, or that the Default was excusable, the rights and obligations of the Parties hereunder shall be the same as if the termination had been issued by District without cause in accordance with this Agreement.
- (c) Upon termination of this Agreement for any reason, Engineer shall cease all work and activity for the Services by the date specified by District and shall not incur any new obligations or perform any additional services for the work performed hereunder beyond the specified date. District shall compensate Engineer in accordance with Section 4, above, for such work provided by Engineer under this Agreement prior to its termination and which has not been previously presented for payment by Engineer to District.
- (d) If 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 Engineer.

20. **Force Majeure.** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, then, within a reasonable time after the occurrence of such event, but no later than ten (10) calendar days after, the Party whose obligations are so affected (the “Affected Party”) thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party’s obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, Force Majeure includes, but is not limited to: acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority other than a Party to this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, severe storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other incapacities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

21. **Assignment.** Engineer shall not assign this Agreement to another party without the prior written consent of District.
22. **Successors and Assigns Bound.** District and Engineer each bind themselves and their successors and assigns to the other Party and to the successors and assigns of such other Party, with respect to all covenants of this Agreement.
23. **Publicity.** Contact with citizens of Fort Bend County, media outlets, or other governmental agencies shall be the sole responsibility of District. Under no circumstances, whatsoever, shall Engineer release any material or information developed or received during the performance of Services hereunder unless Engineer obtains the express written approval of District or is required to do so by law.
24. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, or personally delivered to the following addresses:

<b>If to District:</b>	Fort Bend County Drainage District
	Attn: Chief Engineer
	301 Jackson Street
	Richmond, Texas 77469

**And**

Fort Bend County, Texas  
Attn: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

**If to Engineer:**            **Freese and Nichols, Inc.**  
Attn: \_\_\_\_\_  
10497 Town and Country Way  
Suite 500  
Houston, Texas 77024

Within five (5) business days of the Effective Date of this Agreement, each Party to this Agreement shall designate in writing to the other Party one person and one alternate person to be that Party's designated spokesperson for communications between the Parties.

25.    **Standard of Care.** Pursuant to Section 271.904 of the Texas Local Government Code, Engineer represents to District that Engineer has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession ("Professionals") practicing in the greater Houston metropolitan area. Engineer shall provide the Services to District with the same professional skill and care ordinarily provided by such Professionals under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional.
26.    **Travel Policy.** Mutually approved travel and mileage expenses incurred in the performance of the Services hereunder will be reimbursed to Engineer only to the extent that those costs do not exceed Fort Bend County travel reimbursement allowances. A copy of District's Travel Policy with those reimbursement limits shall be provided to Engineer upon request.
27.    **Arbitration, Litigation Waiver, and Attorney Fees.** District does not agree to submit disputes arising out of this Agreement to binding arbitration nor does District agree to pay any and/or all attorney fees incurred by Engineer in any way associated with this Agreement. Therefore, any references in Engineer's Proposal to binding arbitration, waiver of a right to litigate a dispute, or payment of attorney fees are hereby deleted.

28. **No Waiver of Jury Trial.** District does not agree that all disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Therefore, any references in Engineer's Proposal to District's waiver of jury trial are hereby deleted.
29. **Limitations.** Limitations for the right to bring an action, regardless of form, shall be governed by the applicable laws of the State of Texas, and any provisions to the contrary in Engineer's Proposal are hereby deleted.
30. **Indemnification by District. ENGINEER UNDERSTANDS AND AGREES THAT UNDER THE TEXAS CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, DISTRICT CANNOT ENTER INTO AN AGREEMENT WHEREBY DISTRICT AGREES TO INDEMNIFY OR HOLD HARMLESS ANOTHER PARTY. THEREFORE, ANY AND ALL REFERENCES IN ENGINEER'S PROPOSAL TO DISTRICT DEFENDING, INDEMNIFYING, OR HOLDING OR SAVING HARMLESS ENGINEER OR ANY OTHER PARTY, FOR ANY REASON WHATSOEVER, ARE HEREBY DELETED.**
31. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect. **IT IS ACKNOWLEDGED BY ENGINEER THAT NO OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF DISTRICT HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT OR ANY ATTACHED EXHIBITS HERETO UNLESS EXPRESSLY AUTHORIZED BY THE FORT BEND COUNTY COMMISSIONERS COURT.**
32. **Conflict.** In the event there is a conflict among the terms of this document entitled "Agreement for Professional Engineering Services" and the terms of Engineer's Proposal or any other exhibit attached hereto, the terms of this document shall prevail with regard to the conflict.
33. **Understanding Fair Construction.** By execution of this Agreement, the Parties acknowledge that they have read and understood each provision, term, and obligation contained herein. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting Party than the non-drafting Party.
34. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

35. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver or surrender by District of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
36. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
37. **Certain State Law Requirements for Contracts** The contents of this Section are required by Texas law and are included by District regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Engineer hereby verifies that Engineer and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
- (a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, Engineer is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
  - (b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Engineer does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
  - (c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Engineer does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
  - (d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Engineer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

38. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, ENGINEER ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO DISTRICT FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
39. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
40. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
41. **Certification.** By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.

{Execution Page Follows}

IN WITNESS WHEREOF, and intending to be legally bound, District and Engineer hereto have executed this Agreement to be effective on the date signed by the last Party hereto.

**FORT BEND COUNTY DRAINAGE DISTRICT**

\_\_\_\_\_  
KP George, District Judge

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Laura Richard, District Clerk

**FRESE AND NICHOLS, INC.**

  
\_\_\_\_\_  
Authorized Agent – Signature

Hector E Olmos, P.E., CFM

\_\_\_\_\_  
Authorized Agent- Printed Name

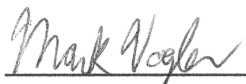
\_\_\_\_\_  
Vice President

\_\_\_\_\_  
Title

01/15/2025

\_\_\_\_\_  
Date

**APPROVED:**

  
\_\_\_\_\_  
Mark Vogler, Chief Engineer

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$\_\_\_\_\_ are available to pay the obligation of the Fort Bend County Drainage District within the foregoing Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, District Auditor

# EXHIBIT A

(Engineer's Proposal Follows Behind)





Innovative approaches  
Practical results  
Outstanding service

10497 Town and Country Way, Suite 500 • Houston, Texas 77024 • 713-600-6800 • FAX 817-735-7491

[www.freese.com](http://www.freese.com)

October 31, 2024

Mr. Mark Vogler, P.E.  
General Manager/Chief Engineer  
Fort Bend County Drainage District  
1124 Blume Road  
Rosenberg, Texas 77471

Re: Request for Authorization  
Drainage and Detention Analysis for Rohan Road and Benton Road

Dear Mr. Vogler:

Freese and Nichols Inc. (FNI) is pleased to submit the attached scope of work (SOW) for the drainage and detention analysis of Rohan Road and Benton Road.

FNI is requesting the amount of \$120,000, to be completed and invoiced on a time and materials basis. As necessary, additional funding may be requested under a separate amendment for any additional effort beyond this request or for effort which occurs outside of the scope of work.

We appreciate the opportunity to continue to serve FBCDD. Feel free to contact me with any questions at 713-600-6805 or [Rolando.Ayala@freese.com](mailto:Rolando.Ayala@freese.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Rolando A. Ayala II'.

Rolando A. Ayala II, P.E., CFM  
Associate

Attachments

- A – Scope of Work
- B – Detailed Cost Breakdown
- C - Compensation

**Attachment A**  
**Scope of Work**  
**Drainage and Detention Analysis for**  
**Rohan Road and Benton Road**

The objective of this analysis is to develop an existing and proposed conditions hydraulic model to identify drainage improvements and mitigation necessary to demonstrate no adverse impact for the Rohan Road and Benton Road roadway improvement project in Fort Bend County, Precinct 1. Limits of the drainage analysis are shown in Exhibit 1. Roadway improvements for this analysis are limited to Rohan Road between Minonite Road (FM 2977) and Benton Road, and Benton Road between Reading Road and Irby Cobb Boulevard.

**BASIC SERVICES:** Freese and Nichols, Inc. (FNI) (Consultant) will complete the following tasks for a **total fee of \$ 120,000**. Effort will be invoiced on a monthly basis based on a percent complete basis.

**TASK 1. Data Collection and Evaluation \$ 7,630**

The Consultant will utilize the following data to complete the analysis:

- GIS Data:
  - 2019 Lidar
  - Existing land use
  - Tracts/Parcels
  - Right of Way and drainage easements
  - Recent aerial photos
- Survey Data:
  - It is assumed that no additional survey will be collected as part of this effort. Survey collected as part of the ongoing design of Rohan and Benton Road will be utilized for this analysis.
- Proposed Roadway Plans
  - Proposed roadway plans for Rohan Road and Benton Road to be provided by Fort Bend County, Precinct 1 roadway consultant.
  - It is assumed recommendations made from this analysis will be incorporated by the roadway consultant and minimal coordination will be required from FNI.
  - Roadway consultant will be responsible for ensuring recommendations made in this analysis are incorporated in the final design plan. Any deviations from recommendations made in this study that require additional modeling effort will be coordinated with FBCDD.
- Hydrologic Models
  - The hydrologic models developed in the following reports will be used to define the baseline (existing conditions) for hydrology.
    - Drainage Analysis Report Benton Road From South of Reading Road to Irby Cobb Blvd., Isani, June 2022
    - Drainage Analysis Report and Detention Study for a 274-Acre Area Rohan Road From 800' East of FM 2977 to Benton Road, Amani Engineering, Inc., December 2021
  - It is anticipated that minimal changes will be made to the previous studies. A contract amendment will be requested if additional updates are necessary.

Consultant will complete a field visit to document current conditions of the study area. The information collected during the field visit (photographs, measurements) will aid in the development of the existing conditions hydraulic model.

#### **TASK 2. Existing Conditions \$ 29,140**

A new unsteady 1D/2D hydrodynamic model representing existing conditions will be developed. The approximate extents of the model are shown in Exhibit 1. The focus of the model is to establish existing conditions along Rohan Road and Benton Road. The existing residential development along Tori Road and Sycamore Road will also be evaluated as part of this analysis. Existing drainage patterns within this area will be evaluated through the incorporation of a 2D mesh. The model will include enough detail to quantify flows, drainage patterns, depths of ponding, and interaction with Dry Creek and the Sunset Crossing Development control structure. The hydraulic model will establish existing conditions for the 10-year, 25-year, and 100-year storm events.

#### **TASK 3. Proposed Conditions and Mitigation Analysis \$ 49,845**

The existing conditions hydraulic model will be modified to incorporate the proposed roadway improvements (Rohan Rd and Benton Rd), drainage improvements, and mitigation necessary to demonstrate no adverse impact to the downstream system. Up to two (2) mitigation alternatives will be analyzed and documented in the drainage report. The selected alternatives will demonstrate no adverse impact to the downstream receiving stream. Additionally, drainage improvements to improve localized flood within the Tori-Sycamore area north of Rohan Road will be investigated as part of the proposed conditions analysis; these improvements will be limited to providing outfall capacity into the proposed drainage system for Rohan Road.

Consultant will coordinate with engineer of the new 32-acre development along Rohan Road. The development known as the Aminabad Colony is east of the Pioneer Community Center and immediately west of the proposed 32-acre Fort Bend County park and detention basin site. The maximum allowable release rate of 0.125 cfs/acre will be used to incorporate proposed development flows for the mitigation analysis to be completed as part of this scope of work.

#### **TASK 4. Deliverables \$ 13,480**

A brief memorandum documenting data collected, assumptions, results, and recommendations will be prepared. The consultant will respond to one round of review comments from the County and make necessary updates to the document.

The technical memorandum, GIS datasets, and H&H models will be submitted to the County at the completion of the project.

#### **TASK 4. Project Management and Coordination \$ 19,905**

Consultant will provide Project Management services including project coordination and communications with the County and monthly status reporting. Consultant will coordinate with Fort Bend County Mobility Bond Program Manager, Rohan Road, and Benton Road design consultant, as necessary, to ensure proposed roadway improvements have been included in the analysis. Up to four (4) Teams meetings with County staff and the Bond Program Manager will be held to present project

updates study results.

Consultant will coordinate with engineer of the new development along Rohan Road, located between Grace Baptist Church and the Pioneer Community Center. A portion of the runoff volume from the new development will be accounted for in the mitigation analysis to be completed as part of this scope of work.

It is anticipated that the technical tasks will be completed within 4 months from Notice to Proceed.







Drainage and Detention Analysis for Rohan Road 10/30/2024				Project Fee Summary	
				Basic Services	\$ 120,000
				Special Services	\$ -
Detailed Cost Breakdown				Total Project	\$ 120,000

Tasks			Labor						Total Hours	Total Labor Effort
Phase	Task	Activity	Basic or Special	Task Description	Hector Olmos	Rolando Ayala	Manning Shiao	Mat Ledaif		
					Senior Advisor	PM	Production	QA/QC		
					\$350	\$270	\$140	\$270		\$ -
				Data Collection and Evaluation						\$ -
				Review Data	2	4	8		14	\$ 2,900
				Field Visit		8	8		16	\$ 3,280
				Survey Data Review	1	2	4		7	\$ 1,450
										\$ -
				Existing Conditions						\$ -
				Hydrologic Model Data	4	4	16		24	\$ 4,720
				Hydrology QC				4	4	\$ 1,080
				Hydraulic Analysis	8	20	80		108	\$ 19,400
				Hydraulic Analysis QC	2			12	14	\$ 3,940
										\$ -
				Proposed Conditions and Mitigation Analysis						\$ -
				Hydraulic Analysis	8	24	80		112	\$ 20,480
				Hydraulic Analysis QC	4			12	16	\$ 4,640
				Mitigation Analysis	8	23	80		110	\$ 20,085
				Mitigation Analysis QC	4			12	16	\$ 4,640
										\$ -
				Deliverables						\$ -
				Memorandum	2	16	40		58	\$ 10,620
				Memorandum QC	2			8	10	\$ 2,860
										\$ -
				Project Management						\$ -
				Meetings/coordination	20	40	16		76	\$ 19,905
				Total Hours / Quantity	65	141	332	48	585	
				Total Effort	\$ 22,575	\$ 38,055	\$ 46,410	\$ 12,960		\$ 120,000

**Attachment C**  
**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>
PRINICIPAL	\$ 390.00
GROUP MANAGER	\$ 370.00
LEAD TECHNICAL PROFESSIONAL	\$ 355.00
ENGINEER VIII	\$ 350.00
ENGINEER VII	\$ 335.00
ENGINEER VI	\$ 270.00
ENGINEER V	\$ 210.00
ENGINEER IV	\$ 170.00
ENGINEER III	\$ 150.00
ENGINEER II	\$ 140.00
ENGINEER I	\$ 130.00
CADD DESIGNER	\$ 195.00
TECHNICIAN IV	\$ 145.00
TECHNICIAN III	\$ 135.00
TECHNICIAN II	\$ 115.00
TECHNICIAN I	\$ 100.00
LEAD GIS ANALYST	\$ 210.00
SENIOR GIS ANALYST	\$ 160.00
GIS ANALYST	\$ 120.00
ENVIRONMENTAL SCIENTIST VIII	\$ 305.00
ENVIRONMENTAL SCIENTIST VII	\$ 285.00
ENVIRONMENTAL SCIENTIST VI	\$ 225.00
ENVIRONMENTAL SCIENTIST V	\$ 185.00
ENVIRONMENTAL SCIENTIST IV	\$ 170.00
ENVIRONMENTAL SCIENTIST III	\$ 135.00
ENVIRONMENTAL SCIENTIST II	\$ 120.00
ENVIRONMENTAL SCIENTIST I	\$ 110.00
ADMINISTRATIVE ASSISTANT/SUPPORT SPECIALIST	\$ 115.00
OPERATIONS ANALYST/ACCOUNTING SPECIALIST	\$ 180.00
PROJECT CONTROL SPECIALIST II / CONTRACT ADMIN	\$ 120.00
CO-OP/INTERN	\$ 85.00

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.