

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF FORT BEND

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT is made and entered into by and between Fort Bend County Drainage District, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as "District," and FREESE & NICHOLS, INC., hereinafter referred to as "Contractor," authorized to conduct business in the State of Texas.

WITNESSETH:

WHEREAS, District desires that Contractor provide professional engineering services for repair of the Big Creek Bypass Structure located in Fort Bend County, Texas, hereinafter referred to as the "Project;" and

WHEREAS, Contractor represents that it is qualified and desires to perform such services; and

WHEREAS, District has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262, LOCAL GOVERNMENT CODE; and

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

SECTION I
SCOPE OF AGREEMENT

- 1.01 Contractor shall provide the services described in Exhibit A, Contractor's Proposal dated August 5, 2010, attached hereto and incorporated by reference as if set forth herein verbatim for all purposes.
- 1.02 Contractor agrees to complete the services called for in Exhibit A within 30 calendar days from the date of this Agreement.

SECTION II
CONTRACTOR'S COMPENSATION

- 2.01 For and in consideration of the services rendered by the Contractor, and subject to the limit of appropriation under Section VI, District shall pay to Contractor an amount not to exceed \$53,000.00, including reimbursable expenses, if any.
- 2.02 Contractor shall submit invoices to District and District shall pay each invoice within thirty (30) days after the District Project Manager's written approval provided however, that the approval or payment of any invoice shall not be considered to be conclusive evidence of performance by Contractor to the point indicated by such invoice or of receipt or acceptance by District of the services covered by such invoice.
- 2.03 Contractor's rates shall not exceed those as provided in Exhibit A.

- 2.04 Reimbursable expenses shall be reimbursed to Contractor at-cost upon submission of properly submitted expense records to District. Service charges are not applicable and not subject to reimbursement.

SECTION III TERMINATION

- 3.01 District may terminate this Agreement at any time by providing ten (10) days written notice to Contractor.
- 3.02 Upon receipt of such notice, Contractor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 3.03 Within thirty (30) days after receipt of notice of termination, Contractor shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.
- 3.04 District shall then pay Contractor that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.
- 3.05 Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to District when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

SECTION IV INSURANCE

- 4.01 During the period of this Agreement, Contractor shall maintain, at its expense, insurance with limits no less than those prescribed below with a carrier having a rating with A.M. Best & Co of A-VII or better:
- A. General Liability (including Contractual Liability):
 - Bodily Injury and Property Damage \$1,000,000.00
 - Aggregate \$2,000,000.00
 - B. Automobile Liability:
 - Bodily Injury and Property Damage \$1,000,000.00
 - Limit per Occurrence
 - C. Worker's Compensations Statutory + \$1,000,000.00
Limit Employer's Liability
 - D. Professional Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.
- 4.02 With respect to the required insurances listed in Section 4.01, Contractor shall, if allowed by law and the insurance carrier:
- A. Name Fort Bend County as additional insured as their interests may appear, with the exception of worker's compensation insurance and professional liability insurance;

- B. Provide County a waiver of subrogation regarding Contractor's worker's compensation insurance;
 - C. Provide County with a thirty (30) day advance written notice of cancellation or material change to said insurance; and,
 - D. Provide County with Certificates of Insurance evidencing required coverages upon acceptance of this Agreement by Commissioners Court.
- 4.03 The policies specified in Section 4.01(A-C) shall name Fort Bend County as an additional insured. Furthermore, the Workers' Compensation and Liability Insurance carriers shall grant a waiver of subrogation in Fort Bend County's favor.
- 4.04 If required coverage is written on a claims-made basis, Contractor 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.
- 4.04 Contractor 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 County.
- 4.05 Approval of the insurance by County shall not relieve or decrease the liability of the Contractor.

SECTION V NOTICE

- 5.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to District or Contractor at the addresses set forth below.
- 5.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 5.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to Contractor:
Project Manager:

Freese & Nichols, Inc.
Cody Cockroft
3100 Wilcrest Drive
Suite 200
Houston, Texas 77042

B. If to District notice must be sent to both District's Purchasing Agent and District Project Manager:

Fort Bend County Purchasing Department
Gilbert D. Jalomo, Jr., CPPB
4520 Reading Road, Suite A

Rosenberg, Texas 77471

Mark Vogler, PE
Fort Bend County Drainage District
P.O. Box 1028
Rosenberg, Texas 77471

- 5.04 Either party may designate a different address by giving the other party ten (10) days written notice.

SECTION VI LIMIT OF APPROPRIATION

- 6.01 Prior to the execution of this Agreement, Contractor has been advised by District, and Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that District shall have available the total maximum sum of \$53,000.00, specifically allocated to fully discharge any and all liabilities which may be incurred by District.
- 6.02 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that Contractor may become entitled to hereunder and the total maximum sum that District shall become liable to pay to Contractor hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$53,000.00.

SECTION VII SUCCESSORS AND ASSIGNS

- 7.01 District and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement.
- 7.02 Neither District nor Contractor shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.
- 7.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

SECTION VIII PUBLIC CONTACT

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

SECTION IX COMPLIANCE AND STANDARDS

Contractor shall render the services hereunder in accordance with generally accepted standards of Contractors practicing in Fort Bend County, Texas applicable thereto and shall use that customary degree of care and skill commensurate with the profession similar to the Project to comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services to be rendered hereunder, and Contractor's performance.

SECTION X OWNERSHIP OF DOCUMENTS

- 10.01 District shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement by the Contractor and his Contractors (deliverables).
- 10.02 No reuse fees or royalty payments will be paid to the Contractor in connection with future reuse or adaptation of designs derived under this contract.
- 10.03 Copies of all complete or partially completed mylar reproducible, preliminary layouts, record drawings, digital files, sketches and other documents prepared pursuant to this Agreement shall be delivered to District when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first, as provided in this Agreement.
- 10.04 Contractor is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, or from duplicating the appearance of the Project depicted in the deliverables for any without the prior express written permission of District.
- 10.05 The documents referenced in this Section are not intended or presented by the Contractor to be suitable for reuse by District or others on extensions of this Project or on other unrelated projects.
- 10.06 Any adaptation or use by District of such documents on extension of this Project or other unrelated projects shall be at District's sole risk.

SECTION XI INDEMNIFICATION

- 11.01 **CONTRACTOR SHALL SAVE HARMLESS DISTRICT FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, BUT ONLY TO THE EXTENT OR DEGREE ON A COMPARATIVE BASIS OF FAULT ARISING FROM ACTIVITIES OF THE CONTRACTOR, ITS AGENTS, CONTRACTORS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**
- 11.02 **CONTRACTOR SHALL ALSO SAVE HARMLESS DISTRICT FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY DISTRICT, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES THAT MIGHT BE IMPOSED ON DISTRICT AS THE RESULT OF SUCH**

**NEGLIENT ACTIVITIES BY THE CONTRACTOR, ITS AGENTS,
CONTRACTORS OR EMPLOYEES.**

**SECTION XII
MODIFICATIONS**

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

**SECTION XIII
MISCELLANEOUS**

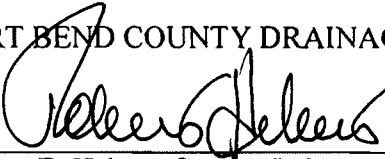
- 13.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 13.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 13.03 Contractor agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; Contractor and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 13.04 If there is a conflict between this Agreement and Exhibit A, the provisions of this Agreement shall prevail.

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SECTION XIV
EXECUTION

This Agreement shall become effective upon execution by District.

FORT BEND COUNTY DRAINAGE DISTRICT:


Robert E. Hebert, County Judge

8-10-2010
Date

APPROVED:

By:


Mark Vogler, PE
Fort Bend County Drainage District

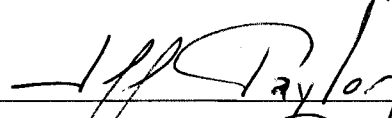
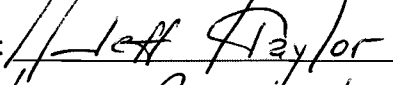
8/6/10
Date

CONTRACTOR: FREESE & NICHOLS, INC.

Signature

Printed Name:

Title:



Vice President

8/6/10
Date

MER:Freese & Nichols.Big Creek.PSA.Drainage District.3523

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$53,000.00 to accomplish and pay the obligation of the District under this contract.


Ed Sturdivant, Fort Bend County Auditor

Exhibit A: Contractor Proposal dated August 5, 2010

Exhibit A

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER

In response and subsequent to our meeting on July 15, 2010, we are pleased to submit this agreement for providing professional engineering services to Fort Bend County Drainage District regarding the Big Creek Drop Inlet structure.

Recently, Fort Bend County Drainage District observed anomalies at the structure indicating that the structure was in a mode of failure. This was evidenced by the movement of the headwall feature supporting the flap valves, spalling, cracking, and loss of significant areas of concrete armoring along the side slopes and immediately adjacent to the flap valves, and substantial washout of the concrete stilling basin. Ground water was observed to be relatively high as well as visual observations that the drainage system appeared to be ineffective. Fort Bend County Drainage District requested the services of Freese and Nichols, Inc. to initially observe the site in its current conditions and review a proposed temporary stabilizing solution provided by the original engineer of record. Subsequent to providing for a peer review of the temporary stabilizing solution, and subsequently recommending a slight variance to the specification originally provided for, FNI was asked to observe the mass concrete placement of placements 1a and 1b. These placements were meant to be a foundation for subsequent placements to temporarily stabilize the downstream end of the conduit structures and to reduce further scour in the stilling basin. As a result of the temporary stabilization of the structure, the District has since requested additional professional services from FNI. The following is our understanding of the District's needs.

We understand that the proposed services included herein are associated with Phase 1a and 1b of a potential multiple phase project to assist the District in safeguarding the structure against additional movement that could negatively affect the structural, hydraulic, and operational effectiveness of the structure. Freese and Nichols, Inc. (FNI) will utilize our technical staff with proven experience with these types of solutions and structures in performing our services.

It is further understood that the services provided in Phase 1a were meant to only temporarily help stabilize the structure from further under mining and reduce the potential for additional scour at the stilling basin and beneath the box culvert conduits. Placement of concrete by the District has occurred as emergency response measures to provide for foundation support to replace the material that has been removed during channel discharges, erosion, and reduce piping potential through the structure. Phase 1 is further meant to provide for our opinion on the root cause of the problems with the structure. Additionally, FNI will provide for up to three alternatives for the District's consideration and approval for repairs of the drop structure. Upon direction of the District, FNI will provide for a scope and fee for professional services (Phase II) for the development of construction drawings and specifications to provide for a long term remediation of the structure.

In the event that the District requests additional services, FNI will provide a scope and fee for professional services to accommodate the District's needs. These services (Phase III) would include construction representation, construction inspections, and construction management.

The following services are exclusive to Phase 1a and Phase 1b.

ARTICLE 1

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

Phase 1 a

1. Provide for an initial site visit to document existing conditions of the structure in a non-stable condition. Document the limits of observable scour, erosion, and loss of concrete within the stilling basin, concrete armoring, and appurtenant structures. Observe current ground water conditions and provide for observations that warrant immediate attention.
2. Review the proposed solution by the original engineer of record
 - o Comment and suggest variances to the proposed sketches and specifications if found necessary;
3. Meet with the District and discuss various options, materials, and placement alternatives;
4. Assist the District with construction strategies, material selection, and time of sequences by phone, in person, or other
5. Provide on-site services during initial underwater placement of concrete;
6. Provide for a follow up inspection of concrete placements provided by the District;
7. Provide for an internal meeting to discuss necessary engineering analysis alternatives and potential design;
8. Gather, review, and analyze all available information provided by the District pertaining to the Big Creek Drop Inlet Structure. This would include, but not be limited to:
 - o All geotechnical analyses and reports (including boring logs)
 - o Original engineering reports, plans, and specifications
 - o All hydraulic analyses provided by previous engineers
 - o Engineering reports, plans, and specifications provided by the engineer of record
 - o Original survey data (prior to construction of the Big Creek Drop Inlet Structure)
 - o Survey data since the District observed the scour and erosion downstream of the structure
 - o Construction inspection reports during the original construction of the report
 - o Batch records and other pertinent information gathered by the District during the emergency repairs of the scour hole(s) located downstream of the structure
 - o Any applicable LiDAR data or other topographic information that will assist FNI engineers
9. FNI requests the District to provide for the following information:
 - o Survey Big Creek profile starting 1000 linear feet upstream of the structure and ending at the confluence of Big Creek and the Brazos River. Profile shall be assumed to be along the centerline of the creek and structure.
 - o Survey cross sections (CS) of Big Creek as follows. Limits of CS to be extended 50 feet north and 50 feet south of the top of bank elevation of the creek
 - 1 - CS 1 located at center of stilling basin
 - 2 - CS 2 located immediately upstream of sheet pile cutoff wall (or CS 1 +/- 45 – 50 feet)
 - 3 – CS 3 located immediately downstream of sheet pile cutoff wall (or CS 2 +/- 50 – 55 feet)
 - 4 – CS 4 located 100 feet downstream of CS 3

- 5 – CS 5 located 100 feet downstream of CS 4
- 6 – 12 – CS's 6 – 12 spaced at 100 feet centers, subsequent to previous CS

Phase 1 b

1. Based on the information provided and the review described in the previous tasks, develop a conceptual description of the root cause of the failure of the structure. Develop a draft memorandum report that will stay in draft form until some future undetermined date to allow the incorporation of additional facts and details as they may arise in future phases.
2. Provide for a preliminary hydraulic analysis of the Big Creek Drop Inlet Structure considering how the structure responds to normal/low hydraulic loading (little to no water upstream of the structure) to high hydraulic loading (upstream loading of the structure and downstream loading of the structure). The elevation limits of this analysis assumes that the backwater from the Brazos River will inundate the gate valve and reach a maximum height of one-half the structural height of Big Creek Drop Inlet Structure. The elevation limits of this analysis also assume that the headwater along Big Creek will not exceed top of canal banks. Note: the elevations discussed here will be used unless the hydraulic analysis and design criteria provided by the previous engineer is more conservative.
3. Provide the District with up to three remedial alternative design concepts to be considered for remedial repairs to the damaged structure. Each repair alternative will be discussed with an opinion of probable construction cost, associated risk, as well as providing our recommendation for the repair alternative. These design concepts will be discussed with the District prior to actual selection of repair system.
4. Meet with the District at a location of their choice or by phone to discuss Phase 1 deliverables.

Deliverable Schedule for Phase 1a and Phase 1b

Upon notice to proceed and receipt of the information requested under Phase 1 b, FNI will provide the following submittals to the District within five (5) working days:

- 1 - Technical memorandum concerning FNI's opinion on the root cause of the failure

1A – 3 hardcopies and one electronic copy (.pdf) delivered by thumb drive

- 2 - Conceptual design alternatives (up to three) for the District's consideration. Each alternative will be associated with an opinion of probable construction cost and associated risk. Drawings/sketches should be considered to be conceptual and be used for planning purposes and will not be intended to be used for construction.

2A – 3 hardcopies and one electronic copy (.pdf) delivered by thumb drive

Phase 2

Upon completion of a recommended remedial repair alternative, prepare plans, specification, and contract documents, if needed, for the repairs. The format will depend on the nature of the repairs and the role of the District in the repairs. The scope and fee for these services will be included by an addendum to this contract.

Phase 3

Upon completion of the design of the improvements, assist the District with obtaining bids, general representation, and/or resident representation for the construction of the repair to the structure. The scope and fee for these services will be included by an addendum to this contract.

ARTICLE II

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by OWNER, which are not included in the above described basic services, are described as follows:

- A. Field surveying required for the preparation of designs and drawings.
- B. Field layouts or the furnishing of construction line and grade surveys.
- C. GIS mapping services or assistance with these services.
- D. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
- E. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by OWNER or 2) due to other causes not solely within the control of FNI.
- F. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by OWNER.
- G. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- H. Preparing data and reports for assistance to OWNER in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- I. Assisting OWNER in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- J. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- K. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- L. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- M. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- N. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- O. Providing services after the completion of the construction phase not specifically listed in Article I.
- P. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.

- Q. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.
- R. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- S. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- T. Provide follow-up professional services during Contractor's warranty period.
- U. Provide Geotechnical field investigations, including borings, sampling, laboratory testing, or instrumentation installation.

ARTICLE III

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

Commence Phase I work on 07/14/2010; Complete Phase 1a by August 6, 2010 and Phase 1b by August 18, 2010 assuming all receipt of documentation requested in Phase 1a is complete by August 6, 2010. A tentative schedule for Phase 2 is completion by 50% plans by August 31, 2010 which will be intended to be sufficient for a contractor to provide bids on unit prices to the District and possibly initiate construction. Completion of the remainder of the plans and specifications will be during construction at a schedule set so as not to delay the contractor. Phase 3 schedule will be dependent on the construction schedule. Schedules for Phases 2 and 3 will be finalized by addendum.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in OWNER or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this AGREEMENT and in Attachment CO.

ARTICLE IV

RESPONSIBILITIES OF OWNER: OWNER shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Owner recognizes and expects that certain Change Orders may be required. Unless noted otherwise, the Owner shall budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.

Further, Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omission, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees to pay for Change Orders and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the aggregate costs of all such approved Covered Change Orders exceed 2% for new construction and 4% for reconstruction. Any responsibility of Engineer for the costs of Covered Changed Orders in excess of such percentage will be

determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include:

- any costs that Owner would have incurred if the Covered Change Order work had been included originally in the Contract Documents and without any other error or omission of Engineer related thereto,
- Any costs that are due to unforeseen site conditions, or
- Any costs that are due to changes made by the Owner.
- Any costs that are due to the Contractor

Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percent of Construction Cost stated above or for any other Change Order. Wherever used in this document, the term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineers Consultants.

- B. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have contract authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to FNI's services for the Project.
- C. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this AGREEMENT.
- F. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- G. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- H. OWNER shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. OWNER shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by OWNER.
- I. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

- J. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this AGREEMENT or other services as required.
- K. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and OWNER designate the following representatives:

- Owner's Designated Representative - Mr. Mark Vogler, PE, CFM, Fort Bend County Drainage District, 1004 Blume Rd., Rosenberg, TX 77471, 281-342-2863 phone, 281-342-9130 fax, voglemar@co.fort-bend.tx.us.
- Owner's Accounting Representative - Mr. Mark Vogler, PE, CFM, Fort Bend County Drainage District, 1004 Blume Rd., Rosenberg, TX 77471, 281-342-2863 phone, 281-342-9130 fax, voglemar@co.fort-bend.tx.us.
- Freese and Nichols' Project Manager - Cody Cockroft, 3100 Wilcrest Drive, Suite 200, Houston, Texas 77042, 713-600-6832 phone, 713-600-6801 fax, cmc@freese.com.
- Freese and Nichols' Accounting Representative - Judy Blair, 11200 Broadway Street, Suite 2332, Pearland, Texas 77584, 832-456-4711 phone, 832-456-4701 fax, jfb@freese.com.

**COMPENSATION
LUMP SUM WITH ADDITIONAL WORK BASED ON COST TIMES MULTIPLIER**

- A. **Basic Services:** Compensation to FNI for the Basic Services in Attachment SC shall be the lump sum of Fifty-Three Thousand Dollars (\$53,000). If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

B. **Schedule of Charges for Additional Work:**

Staff Member

Salary Cost Times Multiplier of 2.3

Resident Representative

Salary Cost Times Multiplier of 2.0

Salary Cost is defined as the cost of payroll of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc., for the time directly chargeable to the project, plus social security contributions, unemployment compensation insurance, retirement benefits, medical and insurance benefits, longevity payments, sick leave, vacation and holiday pay applicable thereto. (Salary Cost is equal to 1.632 times payroll. This factor is adjusted annually).

Other Direct Expenses

Actual Cost Times Multiplier of 1.15

Other direct expenses shall include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

Rates for In-house Services

Computer

\$10.00 per hour

Plotter

Bond	\$ 2.50 per plot
Special	\$ 5.00 per plot
Color	\$ 5.75 per plot

Testing Apparatus

Density Meter	\$700.00 per month
Gas Detection	\$ 20.00 per test

Printing

Black and White

\$0.10 per copy

Color

\$0.50 per copy

Binding

\$5.75 per book

3-10-04

Fort Bend County Drainage District
Phase I - Emergency Consultation, Preliminary Analysis and Alternative Design
Estimate of Engineering Services

LABOR											
TASK	DESCRIPTION	Group Manager JLP	Project Manager CMC	Group Manager BBW	Engineer 1 MH	Engineer 3 DPS	Geotechnical MMS	Geotechnical MAI	Geotechnical DAB	TOTAL TASK HOURS	TOTAL TASK FEE
Phase I a											
1	Initial Site Visit			8	4					12	\$ 2,190.45
2	Provide Peer Review of Temporary Remediation of OER		4							8	\$ 1,591.65
3	Meet with District		4	1	4					9	\$ 1,373.10
4	Discuss with District, materials, and placement alt.									4	\$ 715.65
5	Provide On-site services during Placements 1A & 1B		12							12	\$ 2,146.95
6	Provide for a follow up inspection of 1A through 3A						8			12	\$ 2,467.65
7	Team Meeting	3	3	3	3		3		3	18	\$ 3,542.06
8	Gather and review available information	4	4		4		4	2	8	26	\$ 4,792.80
Phase I b											
1	Perforp Draft Memorandum	1	1	1	8	1	1	8	1	22	\$ 2,984.96
2	Hydraulic Analysis	8	2			2	2			12	\$ 3,002.03
3	Three alternative Design Concepts	10	16	24	24	24	12	16	4	130	\$ 21,276.30
4	Meet with District	4		4	4		4			20	\$ 4,284.30
	TOTAL HOURS	30	58	45	47	25	34	26	20	285	\$ 50,867.90
										LABOR SUBTOTAL	\$ 50,867.90

ACORDTM CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/6/2010

PRODUCER Phone: 817-820-8144 Fax: 817-870-0310

HUB International Rigg
777 Main St, C-50
Fort Worth TX 76102**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.****INSURED**Freese and Nichols, Inc.
4055 International Plz #200
Fort Worth TX 76109**INSURERS AFFORDING COVERAGE****NAIC #**

INSURER A: HARTFORD CAS INS CO

29424

INSURER B: HARTFORD INS CO OF THE MIDWES

37478

INSURER C: TWIN CITY FIRE INS CO CO

29459

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	46UUNKJ0711	10/23/2009	10/23/2010	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
B	X	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	46UUNKJ7011	10/23/2009	10/23/2010	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A	X	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	46XHULO9889	10/23/2009	10/23/2010	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$ \$ \$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	46WERW4994	10/23/2009	10/23/2010	<input checked="" type="checkbox"/> WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The District and its employees, officers, officials, agents, and volunteers are listed as additional insureds under the Blanket Additional Insured Endorsement for General Liability and Auto with a Blanket Waiver of Subrogation on the General Liability, Auto and Workers Compensation. Compensation per terms and conditions of policy and per written contract.

CERTIFICATE HOLDERFort Bend County Drainage District
4520 Reading Road, Suite A
Rosenberg TX 77471**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

AUTHORIZED REPRESENTATIVE



IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORDTM CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/6/2010

PRODUCER Phone: 817-820-8100 Fax: 817-870-0310

HUB Rigg
777 Main St, C-50
Fort Worth TX 76102**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.****INSURED**Freese and Nichols, Inc.
4055 International Plz #200
Fort Worth TX 76109**INSURERS AFFORDING COVERAGE****NAIC #**

INSURER A: Continental Casualty Company

20443

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

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INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
					MED EXP (Any one person)	\$
					PERSONAL & ADV INJURY	\$
					GENERAL AGGREGATE	\$
					PRODUCTS - COMP/OP AGG	\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN EA ACC AUTO ONLY: AGG	\$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE	\$
					AGGREGATE	\$
						\$
						\$
						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS	OTH-ER
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
A	OTHER Professional Claims Made Retro Date 11/1/196	AEH008214422	12/30/2009	12/30/2010	\$5,000,000 \$10,000,000	Claims Made Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDERFort Bend County Drainage District
4520 Reading Road, Suite A
Rosenberg TX 77471**CANCELLATION**

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