



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		05/09/11			
Department:		Public Works			
Department Head:		Gerald P. Cosgrove			
Agenda Coordinator (include phone #): Irene Pegues (7198)				Project No. 6079.1	
CAPTION					
To approve an Engineering contract by and between the City of Plano and Freese and Nichols, Inc. in the amount of \$120,561 for Stormwater Quality Ordinance Development and authorizing the City Manager to execute all necessary documents.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2010-11; 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	154,515	60,000	214,515
Encumbered/Expended Amount		0	-93,740	0	-93,740
This Item		0	-60,561	-60,000	-120,561
BALANCE		0	214	0	214
FUND(S): MUNICIPAL DRAINAGE FUND					
COMMENTS: Expenditures will be made in Municipal Drainage Administration based on need within the approved budget appropriations for each year of the contract. The estimated annual amount to be spent in FY 2010-11 is \$60,561. The estimated future annual amount is \$60,000, which will be made within approved budget appropriations.					
STRATEGIC PLAN GOAL: Stormwater Quality Ordinance Development relates to the City's Goal of Financially Strong City with Service Excellence.					
SUMMARY OF ITEM					
This agreement with Freese and Nichols, Inc. is for engineering services to include development of City stormwater quality criteria to meet Texas Commission on Environmental Quality permit requirements, development of ordinance language for implementing the requirements, assistance with Staff training and outreach presentations to the development community.					
The contract fee is for \$120,561.00 and is detailed as follows:					
Develop City Stormwater Quality Criteria			\$ 69,871.00		
Develop Ordinance Language			\$ 25,357.00		
Staff Training and Outreach Presentations			\$ 25,333.00		
TOTAL				<hr/>	\$ 120,561.00
Funding is available from the Municipal Drainage Fund. Staff feels the fee is reasonable for this project.					



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Engineering Services Agreement	Other Departments, Boards, Commissions or Agencies N/A
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STORMWATER QUALITY ORDINANCE DEVELOPMENT

PROJECT NO. 6079.1

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **FREESE AND NICHOLS, INC.**, a **TEXAS "S" Corporation**, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **STORMWATER QUALITY ORDINANCE DEVELOPMENT** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such engineering services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Engineer

The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

III. Schedule of Work

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

Engineer agrees to meet all insurance requirements, and to require all consultants who perform work for Engineer to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

VII. INDEMNITY

THE ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH

RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ENGINEER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ENGINEERS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ENGINEER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ENGINEER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ENGINEER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ENGINEER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ENGINEER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ENGINEER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

VIII. Independent Contractor

Engineer covenants and agrees that Engineer is an independent contractor and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the

doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Engineer's Opinion of Probable Construction Costs

The parties recognize and agree that any and all opinions of probable construction costs prepared by Engineer in connection with the Project represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Engineer.

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano
Public Works & Engineering Department
P.O. Box 860358
Plano, TX 75086-0358

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

Freese and Nichols, Inc.
1701 N. Market Street, Suite 500
Dallas, TX 75202
Attn: Mike Ways

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. Miscellaneous

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Contract Interpretation:

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

SIGNED on the date indicated below.

DATE: 4/25/11

FREESE AND NICHOLS, INC.
A Texas "S" Corporation

BY: M. D. Wayts
Michael D. Wayts, P.E., C.F.M.
PRINCIPAL

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 25th day of April, 2011, by **MICHAEL D. WAYTS, P.E., C.F.M., PRINCIPAL**, of **FREESE AND NICHOLS, INC.**, a **TEXAS** corporation, on behalf of said corporation.



Cheryl Goodell
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2011, by **BRUCE D. GLASSCOCK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

**EXHIBIT A
SCOPE OF SERVICES
CITY OF PLANO
STORMWATER QUALITY ORDINANCE DEVELOPMENT
PROJECT No. 6079.1**

PROJECT DESCRIPTION:

The goal of this project is to assist the City of Plano Public Works Department and Planning Department Staff in developing a post development stormwater quality control ordinance and program based on the NCTCOG Integrated Storm Water Management (iSWM) program for use in the City's project development and re-development process.

The first phase of this process will be to finalize the City's criteria for water quality requirements. Secondly update the City's existing subdivision and zoning ordinances to include the water quality requirements and to reconcile any conflicting articles. Outreach to other departmental City staff, developers and consultants will be performed to educate the interested groups on the new requirements. The end product of this part of the project is to provide ordinance language to update the subdivision and zoning ordinances for the City of Plano to adopt the program by July 2012 to meet their MS4 Permit requirements.

BASIC PHASE ONE SERVICES:

Task 1. Develop Water Quality Criteria

The NCTCOG iSWM Technical Manual will be referenced for allowable BMP criteria. Any additional criteria or modified criteria will be developed and written into a City document.

- A. Meeting 1 – Meet with the City of Plano Project Manager to discuss the results of the previous project phase and the recommendations for moving forward with adoption of a post development stormwater quality control program. The City will provide a list of preferred primary BMPs and a preliminary outline of a strategy for the use of secondary BMPs for treating water quality volumes via a “treatment train” concept. The FNI team will provide a list of prospective jurisdictions for City consideration and selection for completion of Task 1.1.
- B. Meeting 2 – Attend one meeting with City of Plano Staff and the NCTCOG Staff to discuss and coordinate the City of Plano's reference and use of the NCTCOG iSWM Technical Manual with Special Provisions.

- C. Review the design criteria from the NCTCOG iSWM Technical Manual for the BMPs on the City's preferred primary list and provide recommendations on any additional design criteria that would be needed or may need to be modified for the City's use.
- D. Use the two site examples presented in the earlier phase of the project and one additional redevelopment site (Walton Park Square Add'n., Lot 1R. Blk. 1) to determine recommendations for the water quality point system scoring. This shall include the maximum number of points for each item, the minimum points required for different types of development, recommendations on points required for development incentives and recommended types of incentives.
- E. Provide the City with a draft outline of the recommended design criteria for each of the preferred primary stormwater controls, a revised draft of the water quality point system scoresheet, and a draft list of development incentives at least two weeks prior to Meeting 3.
- F. Meetings 3 & 4 – Meet with the City team to review the recommended storm water controls and water quality point system. In coordination with the City team, develop any revised criteria for the preferred stormwater controls.
- G. Prepare a final list of preferred stormwater controls for the City of Plano, any special provisions relating to their use, and the final water quality point system scoresheet.
- H. Using the two site examples presented in the earlier phase of the project and the additional redevelopment site, prepare an example preliminary site plan and example final plat for each that will show how they could comply with the water quality requirements being proposed. Utilize the checklists prepared in the previously completed phase of this project. Highlight or show changes that would have to occur on the sites to provide compliance as compared to what was actually constructed or approved for development.
- I. Prepare a summary matrix of up to eight jurisdictions that are currently requiring post construction BMPs. The jurisdictions selected should have differing requirements for implementation and operation. The mix of jurisdictions should strive to include at least three from the State of Texas, two from the south-central United States, and the remainder to have at least 15-years of program experience.

For each city, indicate who is responsible or how each of the jurisdictions requires the following to be performed:

- Construction inspections
- Operation and maintenance
- Periodic inspections of operation and conditions
- Appeals

- Variances
 - Enforcement actions.
- J. Provide the City with copies of the information described in paragraphs G, H and I at least three weeks prior to Meeting 5.
- K. Meeting 5 – Meet with the City team to present the revised list of City preferred BMPs, any special provisions and the proposed stormwater scoresheet. Provide a presentation of the two sample sites pointing out items that would require change under the proposed system for the preliminary site plan and final plat. Lead a discussion of the comparison matrix items, including the pros and cons of different methods used by other jurisdictions. Begin work with City Staff to develop the City's preferred procedure or responsibility for each of the items listed in the matrix.
- L. Two representatives from the FNI team will attend a presentation by City Staff to local consultants and developers. This presentation will be to inform the development community of the City's proposed concept for control of stormwater pollutants and to obtain their input as we begin work on the ordinance. Questions and comments will be collected during the presentation. The presentation and any handouts will be prepared by the City and the meeting will be no longer than 2 hours.

Task 2. Update Subdivision and Zoning Ordinances to Include Water Quality

- A. Based on the "Report for Implementation" the ordinance articles and sections that require updating and referencing to the proposed new stormwater section in the Subdivision Ordinance in order to comply with the new water quality requirements include the following:
- Zoning Ordinance, Article 2.808 (3), (4c)
 - Zoning Ordinance, Article 2.809 (3), (4c)
 - Zoning Ordinance, Article 2.810 (3), (4c)
 - Zoning Ordinance, Article 2.811 (3), (4c)
 - Zoning Ordinance, Article 2.812 (3), (4c)
 - Zoning Ordinance, Article 2.814 (3), (4c)
 - Zoning Ordinance, Article 2.826 (5)
 - Zoning Ordinance, Article 3.117 (2c)
 - Zoning Ordinance, Article 3.500
 - Zoning Ordinance, Article 3.600
 - Zoning Ordinance, Article 3.700
 - Zoning Ordinance, Article 3.1002
 - Zoning Ordinance, Article 3.1105 (1), (2)
 - Zoning Ordinance, Article 3.1107 (2a), (2b)
 - Zoning Ordinance, Article 3.1111

- Zoning Ordinance, Article 3.1200 (1bi), (1biv), (2avi), (2avii), (5)
 - Zoning Ordinance, Article 3.1700
 - Zoning Ordinance, Article 4.504 (1bi), (1bii)
 - Zoning Ordinance, Article 4.604 (1bi), (1bii)
 - Zoning Ordinance, Article 4.704 (1bi), (1bii)
 - Zoning Ordinance, Article 4.804 (1bi), (1bii)
 - Zoning Ordinance, Article 5 – Site Plan Review
 - Code of Ordinances, Chap. 21, Art. 1, Sec. 21-2 (f)
 - Subdivision Ordinance, Article 2, Definitions
 - Subdivision Ordinance, Article 3, Platting Procedures
 - Subdivision Ordinance, Article 4, Assurance for Completion and Maintenance of Improvements
 - Subdivision Ordinance, Article 5, Requirements for Public Improvements, Reservation and Design
- B. Obtain Word documents of the City's most recent ordinances so that changes may be tracked as they are made.
- C. Develop language for a new Subdivision Ordinance section for stormwater quality requirements and updated language for the ordinance sections listed in 2A to reference the new Subdivision Ordinance section and submit to City Staff and the City Legal department for review at least four weeks prior to Meeting 6
- D. Meetings 6 & 7 – Review and finalize updated language in the subdivision and zoning ordinances regarding the water quality requirements in coordination with the City team.

Task 3. Outreach and Finalize Ordinance Language

- A. Develop a 2-hour presentation directed towards developers and consultants that reviews the changes that are proposed to the existing ordinances and details the new water quality requirements.
- B. Meeting 8 – Present the outreach presentation to the City team and make adjustments based on staff comments.
- C. One presentation to selected City departmental staff by representatives of the City team and the FNI Team will be given prior to the presentation to developers and consultants. The presentation will last 2-hours and will be hosted in a City facility that is equipped for a PowerPoint presentation. FNI will provide handout materials and additional electronic support. Questions and comments will be collected during the presentation.

- D. City staff will distribute fliers and electronic notices to developers and consultants regarding the day, time, and location of the outreach presentations.
- E. Two (2) presentations by representatives of the City team and the FNI Team will be given on different days. Each presentation will last 2-hours and will be hosted in a City facility that is equipped for a PowerPoint presentation. FNI will provide handout materials and additional electronic support. Questions and comments will be collected during each presentation.
- F. Meeting 9 – All questions and comments from the outreach presentations will be compiled and summarized for the City team with recommendations on how to address them. City Staff will determine if the ordinance language will need to be updated based on the public and City comments and recommendations.
- G. Any updates will be incorporated and submitted to the City for review. On approval of the submittal this will be the final updates of the ordinance language.
- H. An MS-Word electronic copy of the recommended final ordinance language, a listing of all sections of the Zoning and Subdivision ordinances requiring deletions or cross-reference language, and any special provisions for use of BMPs in the iSWM Technical Manual shall be provided to the City.

Additional Services: The following services are additional and shall not be included in the Scope of Services unless specifically approved by the City. FNI shall inform the City when a particular service falls into the "Additional Service" category. Compensation for Additional Services shall be on an hourly basis and FNI will notify and obtain separate authorization from the City before proceeding.

1. Appearances before regulatory agencies other than the City.
2. Additional copies of reports
3. Substantial changes to existing ordinance language in sections not listed in Task 2 Item A.
4. Development of a web site to provide information to the community about the Project and to receive public comments.
5. Meetings in excess of the number of meetings included in the Basic Services.
6. Training on the updated ordinance requirements for City Staff or the public beyond that already defined in this Scope of Services.

7. Preparation of applications and supporting documents for government grants, loans, or planning advances for the public works projects.
8. Providing Basic, Special, or Additional Services on an accelerated time schedule.

EXHIBIT B
COMPLETION SCHEDULE
CITY OF PLANO
STORMWATER QUALITY ORDINANCE DEVELOPMENT
PROJECT NO.6079.1

Task	Working Days
Task 1. Develop Water Quality Criteria	Approximately 140 days; Task completed by November 2011
Task 2. Update Subdivision and Zoning Ordinances for Water Quality	Approximately 80 days; Task completed by January 2012
Task 3. Outreach and Finalize Ordinance Language	Approximately 90 days; Task completed by July 2012
Total	Approximately 310 days; Project completed by July 2012

EXHIBIT C

**PAYMENT SCHEDULE
STORMWATER QUALITY ORDINANCE DEVELOPMENT
PROJECT No. 6079.1**

COMPENSATION

- A. **Not to Exceed:** The total fee for Basic Services in Attachment SC shall be computed on the basis of the Schedule of Charges but shall not exceed One-Hundred Twenty Thousand Five-Hundred Sixty-One Dollars (\$120,561). 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.

Task 1: Develop Water Quality Criteria	\$69,871
Task 2: Update Subdivision and Zoning Ordinances for Water Quality	\$25,357
Task 3: Outreach and Finalize Ordinance Language	\$25,333

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

<u>POSITION</u>	<u>MIN</u>	<u>MAX</u>
PRINCIPAL	225	285
GROUP MANAGER	205	285
SENIOR ENGINEER	150	245
ENGINEER (PE)	115	170
ENGINEER (EIT)	85	130
HYDROLOGIST	65	150
ELECTRICAL ENGINEER	85	200
MECHANICAL ENGINEER	85	200
SENIOR ENVIRONMENTAL SCIENTIST	115	220
ENVIRONMENTAL SCIENTIST	60	130
ARCHITECT (AIA)	105	245
ARCHITECT INTERN	60	120
LANDSCAPE ARCHITECT	115	145
SENIOR URBAN PLANNER	125	200
URBAN PLANNER	70	120
SR. CONSTRUCTION CONTRACT ADMINISTRATOR	110	195
CONSTRUCTION CONTRACT ADMINISTRATOR	75	150
GIS COORDINATOR	90	130
GIS ANALYST	60	130
DESIGNER	90	145
TECHNICIAN	65	120
OPERATIONS ANALYST / ACCOUNTING SPECIALIST	80	140
CONTRACT / REGIONAL ADMINISTRATOR	75	115
WORD PROCESSING/SECRETARIAL	55	90
CO-OP / INTERN	45	75

The ranges and individual salaries will be adjusted annually.

EXPENSES

<u>Plotting</u>	<u>Printing</u>
Bond \$2.50 per plot	Offset and Xerox Copies/Prints \$0.10 per side copy
Color \$5.75 per plot	Color Copies/Prints \$0.50 per side copy
Other \$5.00 per plot	Binding \$5.75 per book
<u>Travel</u>	<u>Computer</u>
51¢ per mile	Computer Usage – not chargeable

OTHER DIRECT EXPENSES

Other direct expenses are reimbursed at actual cost times multiplier of 1.15. They 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, tests, and other work required to be done by independent persons other than staff members.

EXHIBIT "D"
ENGINEERING
INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

- 1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Engineer's Insurance - "Occurrence" Basis:

- 2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
 - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

The Engineer shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate of \$2,000,000

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

<u>Coverages Required</u>	<u>Limits (Figures Denote Minimums)</u>
<input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability	Statutory limits of State of Texas \$100,000 accident \$100,000 disease \$500,000 policy limit disease
<input type="checkbox"/> 2. For Future Use	
<input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program	\$150,000 medical, safety program
<input checked="" type="checkbox"/> 4. General Liability	Complete entry No. 26 Minimum \$500,000 each occurrence \$1,000,000 general aggregate
<input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)	
<input checked="" type="checkbox"/> 6. Premises/Operations	(Items No. 3-10 & 12 require)
<input checked="" type="checkbox"/> 7. Independent Contractors	<u>\$500,000</u> combined single limit for bodily injury and property damage
<input type="checkbox"/> 8. Products	damage each occurrence with
<input type="checkbox"/> 9. Completed Operations	\$1,000,000 general aggregate that applies to project under contract
<input checked="" type="checkbox"/> 10. Contractual Liability	
<input checked="" type="checkbox"/> 11. Personal Injury Liability	\$500,000 each offense & aggregate
<input type="checkbox"/> 12. XCU Coverages	
<input checked="" type="checkbox"/> 13. Automobile Liability	\$500,000 Bodily Injury & Property
<input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned	Damage each accident
<input type="checkbox"/> 15. Motor Carrier Act Endorsement	
<input checked="" type="checkbox"/> 16. Professional Liability	\$1,000,000 each claim \$2,000,000 aggregate
<input type="checkbox"/> 17. Garage Liability	\$_____ BI & PD each occurrence

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of Freese and Nichols, Inc., and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of Freese and Nichols, Inc., is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

Freese and Nichols, Inc.

Name of Contractor

By:

M. Wayts
Signature

MIKE WAYTS
Print Name

Principal
Title

4/27/11
Date

STATE OF TEXAS

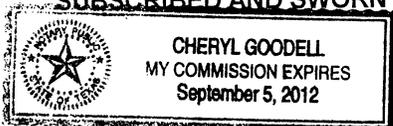
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COUNTY OF DALLAS

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SUBSCRIBED AND SWORN TO before me this 27th day of April, 2011.



Cheryl Goodell
Notary Public, State of Texas