



**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:		09/27/10		
Department:		Public Works & Engineering		
Department Head:		Alan L. Upchurch		
Agenda Coordinator (include phone #): Irene Pegues (7198)				Project No. 6079
CAPTION				
To approve an Engineering Services contract by and between the City of Plano and Freese and Nichols, Inc. in the amount of \$71,969 for the iSWM Based Program Implementation project 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: 2009-10	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	127,270	0	127,270
Encumbered/Expended Amount	0	-30,243	0	-30,243
This Item	0	-71,969	0	-71,969
BALANCE	0	25,058	0	25,058
FUND(S): MUNICIPAL DRAINAGE FUND				
<p>COMMENTS: Funds are available in the FY 2009-10 Municipal Drainage operating budget for this project. Approval of this item will allow the City to enter into an agreement with Freese & Nichols, Inc. for engineering services related to stormwater and drainage program implementation and plan review.</p> <p>STRATEGIC PLAN GOAL: Contracting professional engineering and consulting services for the stormwater program relates to the City's Goal of "Financially Strong City with Service Excellence" and "Great Neighborhoods – 1st Choice to Live".</p>				
SUMMARY OF ITEM				
This agreement with Freese and Nichols, Inc. is for engineering services for iSWM Based Program Implementation project to include development of the list of items necessary for the City to implement a stormwater program for development and redevelopment projects based on the North Central Texas Council of Governments Integrated Storm Water Management (iSWM) Manual and an associated timeline for that implementation.				
The contract fee is for \$71,969.00 and is detailed as follows:				
Research and Data Collection			\$	20,786.00
Comparison of Existing Development Process to iSWM			\$	36,351.00
Development of Implementation List & Timeline			\$	14,832.00
TOTAL			\$	71,969.00
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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iSWM BASED PROGRAM IMPLEMENTATION

PROJECT NO. 6079

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** 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 **iSWM BASED PROGRAM IMPLEMENTATION** 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 North Market Street, Suite 500, LB 51
Dallas, TX 75202
Attn: Mike Wayts

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.

CONTINUED ON NEXT PAGE

F. Effective Date:

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

SIGNED on the date indicated below.

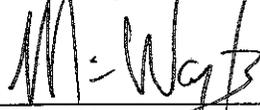
XVII. Authority to Sign

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.

FREESE AND NICHOLS, INC.

A Texas Corporation

DATE: 9/16/2010

BY: 
Mike Wayts, P.E., CFM
PRINCIPAL

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Thomas H. Muehlenbeck
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 16th day of September, 2010, by **MIKE WAYTS, P.E., CFM, PRINCIPAL** of **FREESE AND NICHOLS, INC.**, a **TEXAS** corporation, on behalf of said corporation.



Leah K. Granger
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2010, by **THOMAS H. MUEHLENBECK, 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 iSWM BASED PROGRAM IMPLEMENTATION
PROJECT No. 6079**

PROJECT DESCRIPTION:

The goal of this project is to assist the City of Plano Public Works & Engineering Department and Planning Department Staff in determining the steps necessary for adopting a NCTCOG Integrated Storm Water Management (iSWM) based program for use in the City's project development and re-development process.

The first phase of this process will be to evaluate the City's existing storm water program requirements, ordinances and goals. Secondly compare the City's existing development process and TCEQ MS4 stormwater permit requirements to what is listed in the current 2010 iSWM program with proposed local criteria. The end product of this part of the project is to develop a list of steps or items necessary for completion by the City of Plano to adopt and implement an iSWM based program and provide an implementation timeline/schedule for these items to be accomplished.

Depending on the identified items necessary for adoption and the schedule determined above, the City will negotiate a modification to this contract to perform additional engineering services to assist the City in completing identified items in the recommended process.

BASIC PHASE ONE SERVICES:

Task 1. Research and Data Collection

A. Meeting 1 – Meet with City of Plano Engineering Department and Planning Department staff for a project kick-off meeting to perform staff introductions, provide contact information, discuss the project scope and the proposed work schedule. Provide the City with a presentation and written outline overview of impending State and Federal stormwater regulations. Provide a short presentation with a written outline of the current iSWM requirements and development process and discuss how iSWM can be implemented into the City of Plano's development process.

B. Obtain and review current City of Plano and NCTCOG documents and manuals that will be used in evaluating the City's current processes and procedures include the following:

City of Plano:

- Plano's TPDES MS4 Permit and Storm Water Management Plan

- Storm Drainage Design Manual
- Stream Bank Stabilization Manual
- Erosion & Sediment Control Manual
- Manual for the Design of Water & Sanitary Sewer Lines
- Standard Construction Details
- Special Provisions to Standard Specifications for Public Works Construction, 1997
- Current Zoning Ordinance
- Current Subdivision Ordinance
- Current Plan & Plat Checklists
- Pre-Application Conference & Development Approval Process Form

NCTCOG:

- Standard Specifications for Public Works Construction, 1998 Amendment.
- NCTCOG iSWM Manual for Construction and Development, 2010 (Specifically the Criteria Manual and the Program Guidance Sections).

- C. The City Staff will prepare and provide the consultant with possible revisions of the iSWM requirements and development process indicating processes or requirements that the City may wish to modify for City adoption. An electronic copy will be provided to the consultant at least one week prior to Meeting 2.
- D. Provide the City with a draft outline of the City of Plano's existing development review process at least one week prior to Meeting 2.

Task 2. Comparison of Existing Development Process to iSWM Process

- A. Meeting 2 - Meet with City Staff to review and approve the submitted outline of the City's existing development review process. Review and finalize the City's list of possible revisions to the iSWM requirements and development process.
- B. Prepare final outlines of the City's existing development review process and the City's possible revisions to the iSWM requirements and development process. Submit to the City at least one week prior to Meeting 3.
- C. Meetings 3 & 4 -- Prepare and present a comparison of the existing City of Plano development review process outline and the City's possible revisions to the iSWM requirements and development process in a written item by item format. Identify any differences, conflicts, additional steps or changes in when development/design information would be required to be submitted to the City.

- D. Review the existing City of Plano TPDES MS4 Permit including the associated Storm Water Management Plan and prepare a preliminary list of any additional requirements or duties (e.g. inspections, enforcement, record keeping, etc.) that would appear to be required by individual Departments and Divisions if the City were to adopt the possible revisions to the iSWM requirements and development process for post development stormwater runoff controls.
- E. Submit six (6) copies of a draft report summarizing the results of the comparison from Task 2.C and the preliminary list from Task 2.D to the City Staff for review and comment. Submit the copies at least one week prior to Meeting 5.
- F. Meeting 5 – Meet with City Staff one (1) time to review Staff comments and recommendations.
- G. Integrate City Staff comments and recommendations into a final report and submit six (6) copies to the City.

Task 3. Develop an Implementation List and Timeline

- A. Using the comparison data developed in Task 2 above, establish an outline list of implementation steps/items that the City would need to undertake and a timeline/schedule for the implementation of the City's proposed iSWM requirements and development process. The end goal for the timeline/schedule is the adoption of the City's proposed iSWM based program by July 2012.
- B. Submit this information to the City at least one week prior to Meeting 6.
- C. Meetings 6 & 7 – Review and finalize the information submitted in Task 3.A. In coordination with City Staff, identify the City Department or Division that would be responsible for each implementation step/item and the planned process/procedure the City Departments/Divisions would follow.
- D. Integrate City Staff comments and recommendations into a final process and timeline and submit six (6) copies to the City.
- E. With the final documents provide an itemized draft Scope of Services and proposed fee schedule for assisting the City through the recommended process.

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. Development of a web site to provide information to the community about the Project and to receive public comments.
4. Meetings in excess of the number of meetings included in the Basic Services.
5. Meetings and assisting the City through the implementation process.
6. Preparation of applications and supporting documents for government grants, loans, or planning advances for the public works projects.
7. Assisting the City in updating ordinances that may be affected by the Project.
8. Providing Basic, Special, or Additional Services on an accelerated time schedule.

SCHEDULE OF WORK

EXHIBIT B

**COMPLETION SCHEDULE
CITY OF PLANO
iSWM BASED PROGRAM IMPLEMENTATION
PROJECT NO.6079**

Task	Working Days
Task 1. Research and Data Collection	15
Task 2. Comparison of Existing Development Process to iSWM Process	40
Task 3. Develop an Implementation List and Timeline	30
Total	85

EXHIBIT C

**PAYMENT SCHEDULE
iSWM BASED PROGRAM IMPLEMENTATION
PROJECT No. 6079**

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 Seventy-One Thousand Nine Hundred Sixty-Nine Dollars (\$71,969). 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: Research and Data Collection	\$20,786
Task 2: Comparison of Existing Development Process to iSWM Process	\$36,351
Task 3: Develop an Implementation List and Timeline	\$14,832

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>
50¢ 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

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/15/2010

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 ACCID & IND CO

22357

INSURER C:

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 LTR	INSRD	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	46UUNNW0133	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 - COMPI/OP AGG \$2,000,000
A	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	46UUNNW0133	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) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				
A	X	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	46XHUL09889	10/23/2009	10/23/2010	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	46WBZH7407	10/23/2009	10/23/2010	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER 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

Project: ISWM Based Program Implementation
 Blanket Additional Insured with Blanket Waiver of Subrogation Per Written Contract The City 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.

CERTIFICATE HOLDER

City of Plano
 Public Works & Engineering Dept.
 P.O. Box 860358
 Plano TX 75086

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.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/15/2010

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.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Continental Casualty Company	20443
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

INSURED
Freese and Nichols, Inc.
4055 International Plz #200
Fort Worth TX 76109

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 AUTO ONLY: EA ACC \$ AGG \$								
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$								
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<table border="1"> <tr> <td>WC STATU-TORY LIMITS</td> <td>OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
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 Claims Made \$10,000,000 Aggregate								

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Project: iSWM Based Program Implementation

CERTIFICATE HOLDER

City of Plano
Public Works & Engineering Dept.
P.O. Box 860358
Plano TX 75086

CANCELLATION

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AUTHORIZED REPRESENTATIVE



IMPORTANT

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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: [Signature]
Signature

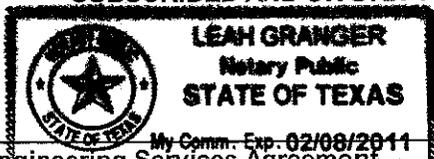
MIKE WAYTS
Print Name

Principal
Title

9/16/2010
Date

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 16th day of September, 2010.



[Signature]
Notary Public, State of Texas