



**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: | 2/22/10 |
| Department: | Parks and Recreation |
| Department Head | Amy Fortenberry |
| Agenda Coordinator (include phone #): Susan Berger (7255) | |

CAPTION

To approve and authorize a contract with Freese and Nichols, Inc. to provide Engineering Services in conjunction with improvements for Park Erosion Control Projects in an amount not to exceed \$82,560 and authorizing the City Manager or his designee to execute any and all documents necessary to effectuate the contract.

FINANCIAL SUMMARY

NOT APPLICABLE OPERATING EXPENSE REVENUE CIP

| FISCAL YEAR: 2009-10 | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
|-----------------------------|--------------------------|-----------------|-----------------|------------------|
| Budget | 0 | 1,362,000 | 500,000 | 1,862,000 |
| Encumbered/Expended Amount | 0 | -50,704 | 0 | -50,704 |
| This Item | 0 | -82,560 | 0 | -82,560 |
| BALANCE | 0 | 1,228,736 | 500,000 | 1,728,736 |

FUND(S): MUNICIPAL DRAINAGE CIP

COMMENTS: Funds are included in the 2009-10 Municipal Drainage CIP. This item, in the amount of \$82,560, will leave a current year balance of \$1,228,736 for the Creek Erosion Projects.

STRATEGIC PLAN GOAL: Plans and specifications for erosion control relate to the City's Goal of Safe Large City.

SUMMARY OF ITEM

The attached Engineering Service Agreement with Freese and Nichols, Inc. is for the preparation of plans and specifications for erosion control structures at various park sites.

The total contract fee is \$82,560 and includes basic services, surveying, structural engineering, bid documents, construction plans, and reimbursable expenses. The basic services are \$46,100, and additional services including surveying, are \$36,460. Surveying will be required at multiple sites.

Freese and Nichols, Inc is on the 2009-10 selected list of qualified consultants for engineering services. The fee is consistent with previous park and engineering projects of this type. The total construction estimate for the project is \$610,000. The basic service fee is 7.56% of the estimated construction budget. The total fee, including basic services, surveying, geotechnical investigation, and reimbursable expenses is 13.53% of the estimated construction budget.

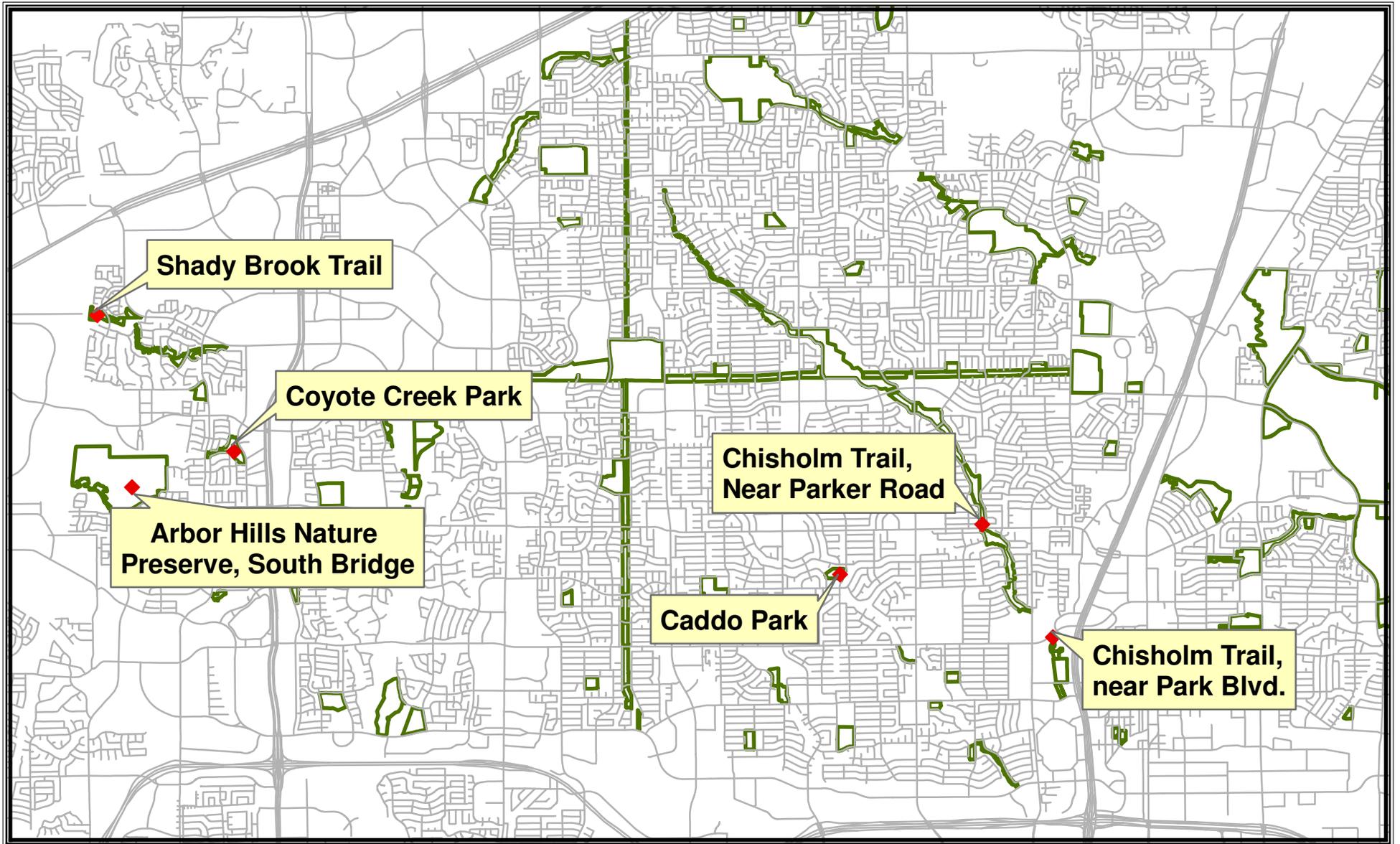


CITY OF PLANO COUNCIL AGENDA ITEM

These improvements are needed to protect trails, storm sewer outfalls, pedestrian bridge abutments, and low water crossings from erosion adjacent to creek banks in parks.

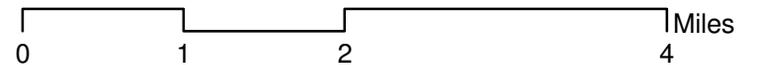
Funding for this project is from the Municipal Drainage Fund and will not come from the General Fund budget. These improvements will not increase operating and maintenance costs.

| List of Supporting Documents: | Other Departments, Boards, Commissions or Agencies |
|--|--|
| Location Map Engineering Services Agreement | |



Park Erosion Control Structures

Location Map of Project Sites



Park Planning Division

PARK EROSION CONTROL STRUCTURES - 2009

PROJECT NO. 6034

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, INCORPORATED**, 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 related engineering services in connection with the **PARK EROSION CONTROL STRUCTURES - 2009** project located in the City of Plano, Collin and Denton 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

ENGINEER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM THE SERVICES PROVIDED BY ENGINEER AND TO THE EXTENT CAUSED BY THE NEGLIGENT ACT OR OMISSION OR INTENTIONAL WRONGFUL ACT OR OMISSION OF

ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM ENGINEER IS LEGALLY RESPONSIBLE (HEREINAFTER "CLAIMS"). ENGINEER IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE DEFENSE COUNSEL TO BE RETAINED BY ENGINEER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. 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 CITY APPROVED 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 SUCH 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 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, Incorporated
1702 North Market Street, Suite 500, LB 1
Dallas, TX 75202-2001
Attn: Kevin R. Johnson

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 and Denton 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:

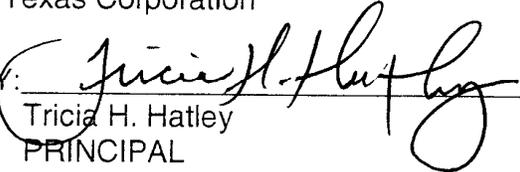
This Agreement shall be effective from and after execution by both parties hereto.

SIGNED on the date indicated below.

**FREESE AND NICHOLS,
INCORPORATED**

A Texas Corporation

DATE: 1-4-10

BY: 
Tricia H. Hatley
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 24th day of January, 2010, by **TRICIA H. HATLEY, PRINCIPAL**, of **FREESE AND NICHOLS, INCORPORATED**, a **TEXAS** corporation, on behalf of said corporation.



Leah Granger
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, _____, 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

EROSION CONTROL PROJECTS – CITY PARKS

PROJECT DESCRIPTION

This project consists of the following improvements within the City of Plano, Texas:

1. Chisholm Trail: Storm Drain Outfall & Embankment, Southeast Underpass Area – Stabilization of the existing outfall structure. It is proposed that the existing outfall will be protected with gabion structures.
2. Chisholm Trail: Trail Undermined, Northwest Underpass Area – Stabilization of the existing trail
3. Caddo Park: North Embankment Regrading and Sodding – Regrading of the existing channel embankment to minimize further erosion.
4. Archgate Park: Outfall Structure End of West Parking Lot - Construct outfall structure and stabilize existing drainage outfall channel. The hydrology from the original design will be utilized to size the outfall.
5. Shady Brook Trail: At Kings Manor Area, Bank Cutting at Trail – relocation of existing trail to avoid channel erosion. Construction documents will not be prepared for this site, bid items will be included in the contract documents and City staff will direct the contractor on the location and limits during construction.
6. Harrington Park Trail: Bank Cutting at Trail – relocation of existing trail to avoid channel erosion. Construction documents will not be prepared for this site, bid items will be included in the contract documents and City staff will direct the contractor on the location and limits during construction.
7. Coyote Creek Park: South Creek Gabion Mattresses – channel erosion protection design
8. South Bridge Abutments at Arbor Hills Nature Preserve – New concrete foundation for rock retaining walls adjacent to bridge abutments.

PART I – PRELIMINARY ENGINEERING

- A. Preliminary Design
 1. Facilitate a project kick-off meeting with City of Plano staff. Data Collection and review of any available City reports, pertinent engineering plans, plats, and other features within the project areas.
 2. Prepare preliminary plans:
 - a. Provide a plan of the existing conditions of each site;
 - b. Prepare preliminary construction documents for the proposed improvements at each site.
 3. Hydraulic & Hydrologic Services

- a. Archgate Park
 - i. Obtain existing plans and review drainage calculations
 - ii. Use existing plan drainage area calculations to determine flows and velocities to the channel.
 - iii. Use Rational Method and existing land use to verify the existing runoff for the 100-year storm event with existing plans.
 - iv. Size drainage channel from the parking lot to the receiving stream based on a typical section.
- b. Coyote Creek Park
 - i. Prepare a base map for the area consisting of aerial photography and available two-foot topography.
 - ii. Prepare drainage area maps for the study locations from available two-foot topography.
 - iii. Obtain hydrologic parameters for each sub-watershed including precipitation data, time of concentration, and land use category.
 - iv. Develop an HMS model using the SCS unit hydrograph method to determine existing flows for the 2-, 5-, 10-, 25-, 50-, and 100-year storm events.
 - v. Develop an HMS model using the SCS unit hydrograph method to determine fully developed flows for the 2-, 5-, 10-, 25-, 50-, and 100-year storm events.
 - vi. Prepare an existing and proposed conditions hydraulic model of up to six (6) cross-sections for Coyote Creek.
 - vii. Develop two (2) design alternatives.
 - viii. Evaluate the proposed improvements for possible adverse stream impacts.
4. Prepare a preliminary opinion of probable cost for the proposed solutions. The purpose of the opinion is to confirm that the project is in general accordance with the construction budget. It is not a guarantee of the construction cost.
5. Submit to the City three (3) sets of preliminary plan drawings for each erosion control structure site listed above.
6. Attend one (1) meeting at the City to review and discuss the preliminary plan drawings and engineering comments.

PART II – FINAL ENGINEERING

1. Finalize plans for the erosion control improvements at each park site.
2. Revise preliminary plans and incorporate comments from the City.
3. Incorporate standard details into the plans and prepare additional details as required.
4. Prepare bid documents as needed, City technical specification will be used for the contract documents.
5. Revise the quantity estimate and prepare a revised estimate of probable construction cost based on the final design of the project.
6. Assist in preparing final bid documents. The City will prepare the final form of construction documents. The following information to be supplied by the Engineer shall include:
 - a. One (1) copy of the finalized technical specifications.

- b. Project specific information for use with the City standard construction agreement form, including the notice to contractors, bid proposal and contract bid schedule forms.
 - c. One (1) set of blackline prints of final drawings and one (1) electronic set of final drawings for Purchasing.
7. Provide necessary Storm Water Pollution Prevention Concept Plans in accordance with the City requirements.
 8. Furnish the City with the following final documents:
 - a. Three (3) sets of blackline prints of final drawings for approval by City.

PART III – Bid Phase Services

- A. Assist the City staff in advertising bids. Furnish additional sets of contract documents for bidding or as directed by the City.
 1. Furnish additional sets of plans and bid documents for up to two (2) plan review rooms to be determined by the City. These documents are to be furnished at no cost to the plan review rooms.
 2. The cost for information (plans and contract document) provided for the purpose of securing bids shall be recovered by the Engineer by a non-refundable deposit from Contractors. Maintain a list of plan holders.
- B. Assist the City in securing bids, issuing notice to bidders notifying construction news publications. The notice to bidders will be furnished by the City for publication in the local news media. The cost for publications shall be paid by the City.
- C. Assist the City in the opening, tabulation, and analysis of the bids received and furnish recommendations on the award of the contract or the appropriate action to be taken by the City.
 1. Evaluate the lowest and second lowest bidder. Bid evaluation will include the contractor's:
 - a. Past work history;
 - b. Financial resources;
 - c. Physical resources to produce the project.
 2. Provide a summary of the bid analysis to the City for use in the selection and award of the construction project.

PART IV – CONSTRUCTION ADMINISTRATION

- A. Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. FNI will endeavor to protect CITY in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall

not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

These services are based on the use of FNI standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures is an Additional Service. If general conditions other than FNI standards are used, the CITY agrees to include provisions in the construction contract documents that will require the construction contractor to include FNI and their subconsultants on this project to be listed as an additional insured on contractor's insurance policies.

- B. Furnish 13 sets of final plans and seven (7) sets of the contract documents marked "For Construction".
- C. Assist the City staff in conducting one pre-construction conference with the Contractor.
- D. Perform up to three (3) site visits to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Contract Documents. If the Engineer is requested to visit the site more frequently, the requested visits shall be considered an Additional Service. In performing the services above, the Engineer will endeavor to protect the City against defects and deficiencies; however, it is understood that the Engineer does not guarantee the Contractor's performance, nor is the Engineer responsible for supervision of the Contractor's operation and employees. The Engineer shall not be responsible for the acts or omissions of any person at the Project sites or otherwise performing any of the work of the Project.
- E. Interpret intent of the drawings and technical specifications for the City and the Contractor. Respond to contractor's verbal technical questions.
- F. Conduct, in company with the City's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with Contract Documents.
- G. Revise the construction drawings in accordance with the information furnished by construction Contractor reflecting the changes in the Project made during construction. The Engineer shall submit one set of "record drawings" to the inspector for review and approval. Upon approval, the city shall have the drawings processed in the following quantities and formats:
 - 1. One (1) set of 24- x 36-inch black-line plans ready for microfilming shall be submitted to the Engineering Department from Design Engineer.
 - 2. Two (2) CD-ROM disks containing scanned images of the 24- x 36-inch final "record drawings" black-line drawings (with "as-built stamps" bearing the signature of the Engineer and the date.) The drawings shall be scanned 1 to 1 as Group 4 TIF files at a minimum resolution of 200 dots per inch and a maximum resolution of 400 dots per inch. The TIF files shall be legible and shall include any post processing that may be required to enhance image quality (e.g., de-specking, de-shading, de-skewing, etc.) Each file shall be named in numeric order format or converted to DXF format.

PART V - ADDITIONAL SERVICES The following services are beyond the basic scope of services described in the tasks above. FNI will provide these services, as additional services upon authorization by the Owner. Such services will be provided in accordance with the fees presented in Exhibit C.

- A. Field Surveying for Design Phase
 - 1. Establish a local control network and tie into the existing City control network on six sites. (NAD 83 datum);

2. Perform topographic survey of are needed to prepare design plans.
- B. Structural Design
1. Chisholm Trail Outfall
 - a. Structural design for proposed gabion baskets around headwall
 2. Chisholm Trail – Trail Undermined
 - a. Structural design to stabilize trail edge.
 3. Coyote Creek – Gabion walls/baffles/tied mattresses
 - a. Structural design of tie-backs and/or reinforcing of gabion matteressing
 4. South Bridge Abutments
 - a. Structural design for footing improvements for existing rock retaining wall adjacent to the bridge abutments.

The following services are beyond the scope of basic services and additional services described in the tasks above. However, FNI can provide these services, if needed, upon the CITY's request. Such services will be provided in accordance with the rates presented in Exhibit C.

- A. Conduct/attend public meetings. The CITY may decide that public meetings are necessary to assist with project relations or for informational purposes.
- B. Coordination with the USACE for Section 404 permitting, including preparation of documentation for a Nationwide Permit, Letter of Permission (LOP), or standard individual 404 permit.
- C. Field surveying beyond what is identified in Basic Services.
- D. Review fees of any kind including FEMA. This scope assumes CITY will pay all review fees.
- E. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- F. Preparing data and reports for assistance to CITY 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.
- G. Assisting CITY in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- H. Assisting CITY 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.
- I. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- J. 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.

- K. Services required to resolve bid protests or to rebid the projects for any reason.
- L. Visits to the site in excess of the number of trips included for periodic site visits, coordination meetings, or contract completion activities.
- M. 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.
- N. Providing services after the completion of the construction phase not specifically listed.
- O. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the CITY.
- 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 services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by CITY.
- S. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by CITY or 2) due to other causes not solely within the control of FNI.
- T. 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.
- U. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- V. Preparation and negotiation of a detailed compensatory mitigation plan for approval by the USACE.
- W. Preparation of documents for a TCEQ individual Section 401 Water Quality Certification.
- X. Consultation with other agencies, including but not limited to the Texas Historical Commission, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Texas Parks and Wildlife Department, Texas General Land Office, or Texas Commission on Environmental Quality.
- Y. Preparation of an Environmental Information Document, Environmental Assessment, Environmental Impact Statement or documentation for a Categorical Exclusion to comply with the regulations pertaining to the National Environmental Policy Act.
- Z. Expert representation at legal proceedings or at contested permit hearings.
- AA. Informal or formal consultation with U. S. Fish and Wildlife Service regarding threatened or endangered species.
- BB. Presence/absence surveys for threatened or endangered species.
- CC. Presence/absence surveys for threatened or endangered species.

PART VI – RESPONSIBILITIES OF CITY

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

- A. Designate in writing a person to act as CITY'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 CITY's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to CITY'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 CITY will require to be included in the drawings and specifications.
- C. 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.
- D. 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.
- E. 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 CITY 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.
- F. 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.
- G. CITY 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. CITY 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 CITY.
- H. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- I. Give prompt written notice to FNI whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- J. Furnish, or direct FNI to provide, Additional Services as stipulated in this agreement.
- K. Bear all costs incident to compliance with the requirements of this section.

EXHIBIT B
SCHEDULE OF WORK

| <u>Item</u> | <u>TASKS</u> | <u>Duration</u> |
|--|---------------------|------------------------|
| Kick-Off Meeting <i>10 days from Notice to Proceed</i> | | <i>1 Day</i> |
| Design Survey <i>To begin upon completion of kick off meeting</i> | | <i>4 weeks</i> |
| Preliminary Design <i>To begin after City review and approval of the Design Survey</i> <i>To be complete in:</i> | | <i>4 weeks</i> |
| Final Design <i>To begin after City review and approval of the Preliminary Design</i> <i>To be complete in:</i> | | <i>3 weeks</i> |
| Prepare Final Bid Documents <i>To begin after City review and approval of the Final Design</i> <i>To be complete in:</i> | | <i>2 weeks</i> |
| TOTAL | | <i>13 weeks</i> |

Note: Total project duration does not include review and comment time by the City. Additional time will be added to the contract duration for review and comment, and as other time is required by the City to address conditions in the design process.

**EXHIBIT C
COMPENSATION**

- A. Basic Services:** Compensation to FNI for the Basic Services shall be the total fee computed on a lump sum basis and shall not exceed \$46,100. If additional work and expenses are required, they will not be billed to the CITY without prior notification and written approval by the CITY'S Representative.
- B. Additional Services:** Compensation to FNI for the Additional Services shall be the total fee computed on the basis of the schedule of charges but shall not exceed \$32,960. If additional work and expenses are required, they will not be billed to the CITY without prior notification and written approval by the CITY'S Representative.

| | | |
|-----------------------------|--|-----------------|
| Topographic Surveying | | \$ 10,780 |
| Structural | | \$ 11,880 |
| Bid Phase Services | | \$ 2,900 |
| Construction Phase Services | | \$ 7,400 |
| Reimbursable Expenses | | <u>\$ 3,500</u> |
| Total | | \$ 36,460 |

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 CITY for CITY'S approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

C. Schedule of Charges for Additional Work:

| <u>POSITION</u> | <u>RATE</u> |
|---|-------------|
| PRINCIPAL | 225 |
| GROUP MANAGER | 225 |
| SENIOR ENGINEER | 180 |
| ENGINEER (PE) | 150 |
| ENGINEER (EIT) | 120 |
| ENVIRONMENTAL SCIENTIST VII | 185 |
| ENVIRONMENTAL SCIENTIST VI | 155 |
| ENVIRONEMNTAL SCIENTIST V | 135 |
| ENVIRONMENTAL SCIENTIST IV | 120 |
| ENVIRONMENTAL SCIENTIST III | 115 |
| ENVIRONMENTAL SCIENTIST II | 100 |
| SR. CONSTRUCTION CONTRACT ADMINISTRATOR | 155 |
| CONSTRUCTION CONTRACT ADMINISTRATOR | 100 |

| | |
|-----------------------------|-----|
| GIS COORDINATOR | 115 |
| GIS ANALYST | 65 |
| TECHNICIAN | 80 |
| CONTRACT ADMINISTRATOR | 90 |
| WORD PROCESSING/SECRETARIAL | 55 |
| CO-OP | 50 |

The ranges and individual salaries will be adjusted annually.

EXPENSES

Plotting

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

Printing

Offset and Xerox Copies/Prints \$0.10 per side copy
 Color Copies/Prints \$0.50 per side copy
 Binding \$5.75 per book

Travel

55¢ per mile

Computer

Computer Usage \$10.00/hour

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 Dallas, 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 \$3,000,000

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 \$3,000,000 aggregate |
| <input type="checkbox"/> 17. Garage Liability | \$_____ BI & PD each occurrence |

| ACORD™ CERTIFICATE OF LIABILITY INSURANCE | | DATE (MM/DD/YYYY) 12/22/2009 | | | | | | | | | | | | |
|--|--------|---|-----------------------------|--------|---|-------|--|-------|--|-------|------------|--|------------|--|
| PRODUCER Phone: 214-979-6220 Fax: 214-979-6215 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 | | <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURERS AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: HARTFORD CAS INS CO <i>A</i></td> <td>29424</td> </tr> <tr> <td>INSURER B: HARTFORD INS CO OF THE MIDWEST <i>A</i></td> <td>37478</td> </tr> <tr> <td>INSURER C: TWIN CITY FIRE INS CO CO <i>A</i></td> <td>29459</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table> | INSURERS AFFORDING COVERAGE | NAIC # | INSURER A: HARTFORD CAS INS CO <i>A</i> | 29424 | INSURER B: HARTFORD INS CO OF THE MIDWEST <i>A</i> | 37478 | INSURER C: TWIN CITY FIRE INS CO CO <i>A</i> | 29459 | INSURER D: | | INSURER E: | |
| INSURERS AFFORDING COVERAGE | NAIC # | | | | | | | | | | | | | |
| INSURER A: HARTFORD CAS INS CO <i>A</i> | 29424 | | | | | | | | | | | | | |
| INSURER B: HARTFORD INS CO OF THE MIDWEST <i>A</i> | 37478 | | | | | | | | | | | | | |
| INSURER C: TWIN CITY FIRE INS CO CO <i>A</i> | 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 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"/> PRO-JECT <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 GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | 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) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AGG \$ |
| A X | EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> 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 OTHER | 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 |

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

2009 Erosion Control Project-Parks Department
 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 <i>Reviewed WSD</i> City of Plano Mr. Bill Dakin, Jr., ASLA 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 |
|--|---|

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare and affirm that no person or officer of **FREASE AND NICHOLS, INCORPORATED** (herein "Contractor") is either employed by the City of Plano or is an elected official of the City of Plano and who has a financial interest, direct or indirect, in any contract with the City of Plano or has a financial interest, directly or indirectly, in the sale to the City of Plano of any land, or rights or interest in any land, materials, supplies or service. As per Section 11.02 of the Plano City Charter, interest represented by ownership of stock by a City of Plano employee or official is permitted if the ownership amounts to less than one (1) per cent of the corporation stock.

I further understand and acknowledge that the existence of a prohibited interest at any time during the term of this contract will render the contract voidable.

Freese and Nichols, Inc.

Name of Consultant

By:

Tricia Hatley
Signature

Tricia Hatley, P.E.

Print Name

Principal

Title

1-4-10

Date

STATE OF TEXAS §

§

COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 4th day of January, 2010.



Leah Granger
Notary Public, State of Texas

Engineering Services Agreement
Park Erosion Control Structures - 2009
Project No. 6034

Exhibit E - Page 1