

SPRING CREEK CHANNEL AT COLLIN CREEK MALL – FEASIBILITY STUDY

PROJECT NO. 6804

**ENGINEERING
PROFESSIONAL SERVICES AGREEMENT**

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

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the **SPRING CREEK CHANNEL AT COLLIN CREEK MALL – FEASIBILITY STUDY** 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.

Engineer shall perform his or her professional engineering services with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license. All such professional services shall be performed as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

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 SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, OFFICIALS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LOSSES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS, DAMAGES, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, INCLUDING EXPERT OR CONSULTANT FEES, COURT COSTS, AND ATTORNEY'S FEES, RESULTING FROM PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, TO THE EXTENT SUCH PERSONAL INJURY, PROPERTY DAMAGE OR HARM ARISES OUT OF OR IS

OCCASIONED BY THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY OBLIGATIONS OWED BY THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, CONSULTANTS, AND REPRESENTATIVES, IN THE PERFORMANCE OF THIS AGREEMENT.

IF THE CITY DEFENDS AN ACTION, CLAIM, LAWSUIT OR OTHERWISE INCURS ATTORNEY'S FEES AS A RESULT OF AN INDEMNIFIED CLAIM AS STATED ABOVE, ENGINEER AGREES TO REIMBURSE THE CITY IN PROPORTION TO THE ENGINEER'S LIABILITY.

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
Attn: Lee D. Stimpson, P.E., Sr. Engineer
Engineering Department, Suite 250
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.
Attn: David Rivera, P.E., Project Manager
2711 North Haskell, Suite 3300
Dallas, TX 75204

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

XVI. Miscellaneous

A. Paragraph Headings:

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

B. Contract Interpretation:

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

C. Venue/Governing Law:

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

D. Successors and Assigns:

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

E. Severability:

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

F. Effective Date:

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

G. Authority to Sign:

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

SIGNED on the date indicated below.

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

DATE: _____

BY: _____
Kelly Dillard, P.E.
VICE PRESIDENT

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Paige Mims
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2016, by **KELLY DILLARD, P.E., VICE PRESIDENT**, of **FREESE AND NICHOLS, INC.**, a **TEXAS “S”** Corporation, on behalf of said “s” corporation.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2016, by **BRUCE D. GLASSCOCK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT A
SCOPE OF SERVICES

Spring Creek Channel at Collin Creek Mall - Feasibility Study

ARTICLE I

Introduction

Spring Creek is an urban stream flowing through the central portion of the City of Plano; from its headwaters near the intersection of Hedgcoxe and Coit Roads, to the southern border of the City near the intersection of President George Bush Turnpike and US-75. As an urban stream, Spring Creek has undergone a series of alterations along its path such as channelization, bank stabilization, erosion control works, drop structures, and culverts, among others. One of the most significant alterations occurred in 1979, when three arch culverts were installed to pass the flows underneath what became the Collin Creek Mall parking lot.

The City of Plano is currently evaluating alternatives for replacing this arch culvert system, with the objective of creating an amenity for this area. One of the most desired alternatives is to eliminate the culverts and restore the creek as an open channel, a concept known as “stream daylighting”. The main objective of this Feasibility Study (FS) is to investigate two (2) potential alternatives that would achieve the City’s vision and objectives and determine their viability from an environmental, engineering, urban planning, economic and regulatory perspectives.

BASIC SERVICES: Freese and Nichols Inc. (FNI) shall render the following professional services in connection with the development of the Project:

Task 1 – Project Management

FNI and its Sub-Consultants (Verdunity and Catalyst) will work in close coordination with the City of Plano staff over the life of the study. The Consultant Team Project Manager (PM) will be the point of contact for project communication and coordination with the City’s designated PM. The Consultant Team PM will initiate the project by developing a project schedule and conducting a kick-off meeting with the City’s staff as described in **Task 6**. FNI will prepare a monthly progress report (One Page Report) that will be included with project invoicing. These reports will summarize completed and ongoing activities, planned activities for the next reporting period, problems encountered and actions to remedy them, among other important project aspects. Project invoicing will be in accordance with City contracting requirements presented at the outset of the project.

Task 2 – Data Collection

To initiate the development of the study, the Consultant Team will collect existing data pertinent to the study area and the objectives of this study. The data to be collected will include the following:

- The latest City of Plano Comprehensive Plan.
- Existing Hydrologic and Hydraulic (H&H) models and reports.
- Geographic Information Systems (GIS) data such as topography, soil types, geology, zoning maps, tax parcels, storm drain system, easements, property lines, land use and LiDAR data.
- Historic aerial photography.
- Previous watershed studies.

- Environmental resource data available on current agencies databases.
- Hydrogeologic data.
- NCTCOG, 2014 and 2015 Stream Bioassessment.
- Existing and planned major utilities and infrastructure improvements.
- Existing and planned City, TxDOT, and NTTA transportation improvements.

Task 2.1 – Field Reconnaissance

A windshield survey of the study area will be conducted in support of the data collection efforts. The objective of this survey is to confirm and supplement previously acquired data and to gain further knowledge of the potential environmental and hydrologic characteristics of the study area. Observations will take place from public access points such as roads, bridges, and trails, and it will include an inspection of the interior conditions of culverts in the study area. It is considered greatly beneficial that City staff should accompany the Consultant Team in this effort in order to provide further insights to specific issues of the study area.

Task 3 – Existing Conditions Analyses

Task 3.1 – Existing Conditions Hydrologic and Hydraulic Analysis

This task includes creating a new hydrologic model for the study area or reviewing an existing one in order to determine if it properly reflects existing and ultimate development conditions (based on the latest zoning maps). The hydrologic analysis will be performed using HEC-HMS and it will serve to determine the peak flows for the 5-, 10-, 25-, 50-, 100-, and 500-year storm events. If there is an existing model available, it will be updated and converted to the latest version of HEC-HMS.

Similar to the hydrologic model, a new steady-state hydraulic model will be created in HEC-RAS if an existing one is not available. If there is an existing hydraulic model it will be reviewed to validate if it properly reflects the existing conditions geometry and roughness of Spring Creek in the study area. The new hydraulic model will be created (or the existing one updated) based on LiDAR data and record drawings (no survey will be conducted as part of this effort). Special attention will be given to the geometric representation of the three arch culverts in the model, as this is fundamental to determine their hydraulic capacity across the Collin Creek Mall property. Water surface profiles both upstream and downstream of the arch culverts will be calculated in the model for the same storm events evaluated in the hydrologic model for fully developed watershed conditions. The water surface profile for the regulatory flood event (100-yr recurrence interval) under existing and fully developed conditions will be used as the basis for comparison against all the alternatives that will be evaluated in this study. All calculations will be based on City of Plano drainage criteria manual. No alternative will be considered feasible if it worsens flood conditions along Spring Creek in the study area. The Spring Creek segment from West 16th St to its confluence with Pittman Creek is considered the study area for hydraulic modeling purposes.

Task 3.2 – Desktop Phase I Environmental Site Assessment

A Desktop Phase I ESA is a limited preliminary evaluation of the potential for chemical contamination which involves the review of historical land use records and regulatory database search reports for the site. This Desktop Phase I ESA is intended to be a limited records review of the proposed project site to identify potential environmental concerns, which may be considered a fatal flaw to the proposed project. It does not involve the collection and analysis of samples from soils, groundwater, or other environmental media. If a Desktop Phase I ESA identifies a

significant potential for the occurrence of environmental concerns, then a Phase I or Phase II ESA is typically recommended to verify the presence or absence of chemical contamination.

This Desktop Phase I ESA will be conducted based on standards published by the Environmental Protection Agency All Appropriate Inquiries (AAI) Final Rule and ASTM International (ASTM) under Standard Guideline E1527-13, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

As a note, a Desktop Phase I ESA can reduce, but not eliminate, the level of risk for unidentified environmental contamination. No Phase I ESA can guarantee the absence of contamination. Only sampling and analysis can confirm the presence or absence of chemical contamination at a site. Sampling and analysis are beyond the Scope of Services for this Desktop Phase I ESA. Additionally, this Desktop Phase I ESA does not include an investigation or survey for the presence of mold or asbestos.

In the absence of any standards, the opinions and conclusions found in the Desktop Phase I ESA will be based on caution and conservatism by an experienced professional. Environmental regulations are continually changing, and a site determined to be uncontaminated based on current regulations and/or technical standards could be considered a contaminated site in the future based on new or amended regulations or standards.

FNI shall render the following professional services in connection with completion of the Desktop Phase I ESA:

I. **Historical Land Use Review**

Perform an investigation into prior ownership and past land uses on the subject property. FNI will attempt to identify obvious uses of the subject property from the present back to the property's first developed use, or back to 1950, whichever is earlier. To accomplish this task, FNI will review the following records (if available):

- a. Interviews with City representatives and property owners/tenants.
- b. Historical aerial photography.
- c. City directory abstracts.
- d. Sanborn fire insurance maps.
- e. Recorded environmental easements or liens on the subject property.

II. **Regulatory Agency Records Review**

FNI will review information found in federal and state regulatory records for the subject property, including records related to environmental-related permits, notices-of-violation, and incidents involving use, disposal, or accidental release of hazardous substances, petroleum products, or other waste materials. Local records, if available, related to the subject property will also be reviewed for indications of environmental concern.

Task 3.3 – Desktop Geomorphology Assessment

A desktop geomorphological assessment will be conducted for the study area which will include the following tasks:

- Evaluate the stream geomorphology from a watershed scale. Using the delineated watershed boundary assess sediment sources.

- Evaluate channel slope upstream and downstream of study site using historical and recent contour data. Compare the slopes over time to estimate change.
- Use contour data to assess channel slope profile and estimate slope morphology and stream bedform (riffle-pool).
- Use contour to measure channel geometry. Compare LiDAR data from various years to estimate rate of change (is the system eroding, depositing, or in balance). This will be achieved at up to 10 locations (5 upstream and 5 downstream of the project site)
- Evaluate soil data to estimate past stream corridor.
- Evaluate geology data to estimate depth to bedrock and how that will affect the stream plan and profile (alluvial (soil) versus threshold (rock) stream).
- Use historical georeferenced historical imagery and topographic maps to evaluate restoring the historical stream alignment (pre-development). Evaluate if meanders can be or should be restored.
- Use aerial images to estimate riparian buffer widths.
- Use historical aeriels, topography maps, and soil maps to estimate historical floodplain footprint.
- Use previous studies (NCTCOG, 2014 and 2015 Stream Bioassessment) to estimate how the project will affect water quality (bacteria, nutrient, DO, temperature, pH parameters) at the study area.
- Cursory Site Visit (windshield survey) of the project reach to estimate potential geomorphological changes to the upstream and downstream reaches. Approximately ½ mile upstream and downstream will be assessed. Photographs and notes will be taken. No GPS or measurements will be taken at this time.

Task 4 – Evaluation of Alternatives

The study will evaluate two (2) alternatives for the removal of existing arch culverts and creation of a new greenway corridor and public space that will integrate with future redevelopment of the mall site in accordance with the City’s recently adopted comprehensive plan and future land use designations. The Consultant team will conceptualize two alternatives that can be generally characterized as:

- I. Open channel with no water features
- II. Open channel with water features

Both alternatives will be evaluated in light of the criteria listed under **Tasks 4.1** through **4.8** as described below.

Task 4.1 – Acreage Requirements

Space requirements for the width of the channel and possible constructed amenities will be evaluated for both alternatives considered. The space requirements will be balanced with the resulting developable property to assess and recommend a highest and best use for the stream as well as the surrounding property.

Task 4.2 – Geomorphic Analysis

The geomorphological information obtained in **Task 3.3** will help guide stream design decisions (stream alignment, ponding, grade control, floodplain width) as related to each alternative.

Task 4.3 – Preliminary Permitting Assessment

The Consultant team will perform a preliminary evaluation of permitting requirements for each alternative. It will also conduct a windshield survey and preliminary review of environmental constraints to identify key issues related to potential impacts to environmentally sensitive features. Jurisdictional authorities and permitting requirements for construction of the proposed improvements will be identified, including: U.S. Army Corps of Engineers (USACE), Texas Commission on Environmental Quality (TCEQ), Texas Pollutant Discharge Elimination System (TPDES), and the National Pollutant Discharge Elimination System (NPDES). The desktop ESA described in **Task 3.2** and the following tasks are included in the permitting assessment:

Task 4.3 a – USACE Section 404 Permitting Evaluation

The Consultant team will review the alternatives developed and prepare a section of the engineering report outlining the potential Section 404 permitting options including estimated timelines and mitigation costs.

Task 4.3 b - TCEQ Water Rights

In Texas, water rights follow the Prior Appropriation doctrine, where priority dates indicate the seniority of one water right over another. This system is also known as "first in time, first in right". Alterations to Spring Creek associated to the project may not impair existing water rights or vested riparian rights. In other words, the alternations should not cause adverse impact to the uses of other appropriators. Adverse impact to another appropriator includes: the possibility of depriving an appropriator of the equivalent quantity or quality of water that was available with the full, legal exercise of the existing water right before the change; increasing an appropriator's legal obligation to a senior water right holder; or otherwise substantially affecting the continuation of stream conditions as they would exist with the full, legal exercise of the existing water right at the time of the appropriator's water right was granted. The Consultant team will perform a high level water rights evaluation with the objective of identifying if the project will require obtaining a water right permit. If that is the case, an outline of a recommended water rights permitting path will be developed based on current regulations.

Task 4.3 c – FEMA Floodplain Impacts

FNI will assist the City in obtaining FEMA effective models for the Spring Creek channel reach. These models will be utilized, as appropriate, in development of **Task 3.1**. The hydraulic model will be updated to reflect proposed conditions for the selected alternative. FEMA effective hydrologic discharges will be analyzed and documented as part **Task 3.1**. Resulting findings will be evaluated to determine the necessity of performing a future Letter of Map Revision (not included in this scope) for the proposed changes.

Task 4.3 d – Surface Water and Groundwater Impacts

Alternatives will be evaluated for the need and impact of recharge flow source to maintain water surface elevations and/or surface flows. The feasibility and permitting implications of groundwater makeup well construction will be evaluated.

Task 4.4 – Hydraulic Impact Analysis

The hydrologic and hydraulic models prepared under **Task 3.1** will be used to simulate the changes in channel geometry and land cover resulting from each alternative. The models will provide the tools to evaluate the hydraulic impacts of each alternative in the study area, primarily in terms of water surface profiles and flow velocities. It is of utmost importance that the alternatives do not cause an increase in flood levels or flow velocities upstream or downstream of the project site.

Task 4.5 – Concept level Opinion of Probable Construction Costs (OPCC)

Preliminary opinion of probable construction costs (OPCC) will be developed for each feasible alternative. OPCC include estimates of contingencies and allowances for charges of professionals and consultants. OPCC will be made on the basis of FNI's judgement as an experienced and qualified design professional firm. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or Contractor's methods of determining their prices, and that any utilitarian evaluation of any facility to be constructed or work to be performed on the basis of the report must of necessity be speculative until completion of its detailed design. Accordingly, FNI does not guarantee that proposals, bids or actual costs will not vary from the opinions submitted as part of this feasibility study.

Task 4.6 – Concept Level Sketches

Prepare preliminary sketches for linear and pond concepts for both alternatives. Sketches will provide a general overview of open space boundary and integration of various landscaping and low impact design alternatives. Sketches will be utilized in selection of preferred alternative for further development.

Task 4.7 – Interdepartmental Coordination

Conduct a charrette-style planning session with project team and relevant City staff to develop general concepts for linear open space network and ponds with grade control open space network. This workshop will serve as a brain storming session to receive the ideas and desires of each of the stakeholder departments in siting improvements consistent with larger regional land use considerations.

This meeting will include consideration of the land use options generated as part of the recent Comprehensive Plan development. These options will be used in conjunction with the staff input from the charrette workshop to recommend high and best use of mall property adjacent to each alternative.

Task 5 – Selection of Preferred Alternative

After completion of **Tasks 1** through **4** the Consultant team will conduct a working meeting with City staff to present findings and compare the feasible alternatives. Based on this comparative analysis, City staff will select their preferred alternative for further analysis. The Consultant team will support City staff in their evaluation and selection process.

Task 6 – Project Team Meetings

Prepare for and attend up to 4 meetings with City Staff at different stages of the project. The main objectives of each meeting are as follows:

- Meeting 1 : Collaborative Kickoff/Brainstorming meeting to obtain guidance and feedback from the different City departments regarding their vision and expectations for the project. This meeting will also serve to review project objectives, schedule, data needs, and establishing the preferred methods of communication.
- Meeting 2 : The Consultant Team will present the initial recommendations for each alternative.
- Meeting 3 : Charrette planning session with City staff (see **Task 4.8**).
- Meeting 4 : Final meeting where City staff will select its preferred alternative.

Task 7 – Deliverables

Task 7.1 – Presentation to City Council

The Consultant Team will prepare a Powerpoint presentation of the project to be offered before the City Council. The presentation will include the project background, scope of the project, methodology, description of the 2 alternative projects, cost and time differentials, and benefit/cost considerations. A draft presentation will be submitted to City staff at least three (3) days before the City Council meeting for review. The Consultant Team will then address comments and finalize the presentation.

Task 7.2 – Attend & Present at City Council Meeting

The Consultant Team will conduct the project presentation at the City Council meeting and address Council or community questions about the project.

Task 7.3 – Feasibility Study Report

After completion of **Task 7.1**, a draft report documenting the methodology and results of the various analyses conducted in this study will be submitted to the City in electronic format (pdf) for their review and comments. The report will be based on a general outline similar to the following:

- Executive Summary
- Introduction & Project Vision
- Evaluation of Existing Conditions
- Alternatives Evaluated
- Recommended Alternative
- Permitting Requirements
- Time and Cost Constraints
- Construction Timing Considerations
- Conclusions

After receiving the City's comments, the Consultant team will address them and generate a Final version of the report. FNI will deliver three (3) hard copies of the final report along with one (1) in electronic format (pdf) to the City.

ARTICLE II

SPECIAL SERVICES:

Financial Feasibility & Sustainable Return on Investment (SROI) Analysis

Develop sustainable return on investment model that quantifies economic, social, and environmental performance of the open space network development alternatives. The model will determine the net present value of the Collin Creek Mall site based on current City maintenance commitments, projected property and sales tax revenues, annualized flood damages, ecosystem services (air quality, water quality, flood protection) and surrounding property values within 1.0 mile radius. Analysis results will include life cycle performance comparison with the baseline scenario.

The SROI will utilize the City's existing economic analysis information to inform the redevelopment area's potential tax revenue generation which is included as one of the project life cycle benefits. Redevelopment with higher quality open spaces will generally enhance revenue performance of the integrated uses and this is considered in the SROI analysis.

ARTICLE III

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

1. Development of illustrative Perspective Sketches depicting the Design Concept Plan for the proposed channel amenities, improvements and potential future land use.
2. Additional alternatives to be detailed modeled or evaluated, including analysis of study areas beyond those outlined in scope of work.
3. Prepare and submit Letter of Map Revision to FEMA for the proposed changes.
4. Field surveying.
5. Water Rights modeling.
6. Appearances or meetings before regulatory agencies other than the City.
7. Soil and foundation investigations, including field and laboratory tests, borings, related engineering analyses, and recommendations.
8. Preparation of a Section 404 pre-construction notification for submittal to the USACE requesting coverage under a Nationwide Permit.
9. Section 10 Permitting with the USACE.
10. Preparation of a formal written request for USACE authorization under a letter of permission procedure.
11. Preparation of a standard individual Section 404 permit application.
12. Preparation of Environmental Information Document, Environmental Assessment, or an Environmental Impact Statement.
13. Conduct TXRAM or similar conditional assessment.
14. Conduct freshwater mussel survey.

15. Presence/absence surveys for federally listed threatened/endangered species.
16. Preparation of a mitigation plan to compensate for impacts to waters of the U.S.
17. Application to Texas Commission on Environmental Quality for individual 401 Water Quality Certification.
18. Application for General Land Office easements.
19. Application for Texas Parks & Wildlife Department Sand and Gravel Permit.
20. Additional field investigations or analysis required to respond to public or regulatory agency comments.
21. Consultation with the Texas Historical Commission, field survey, or analysis required for cultural resources investigations.
22. Consultation with the U. S. Fish and Wildlife Service under Section 7 of the Endangered Species act.
23. Expert representation at legal proceedings or at contested hearings.
24. Mitigation monitoring if required by permit conditions.
25. Monitoring for compliance with permit conditions.
26. Additional modifications to the compensatory mitigation plan.
27. Providing Geotechnical investigations, studies, or reports.

ARTICLE IV

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

- **Tasks 1** through **7.2** will be completed within three (3) months of execution of this agreement.
- The Feasibility Study Report draft (**Task 7.3**) will be completed within one (1) month of completion of **Task 7.2**. The final version of the report will be completed within two (2) weeks after receiving comments from the City.

EXHIBIT "B"
SCHEDULE OF WORK

Basic Services

Activity	Duration (weeks)
Notice to Proceed	0
Data Collection & Field Reconnaissance	2
Existing Conditions Analyses	2
Evaluation of Alternatives	2
Concept Level Opinion of Probable Construction Costs	<1
Selection of Preferred Alternative	<1
Presentation to City Council	1
Feasibility Study Report Draft	2
Feasibility Study Report Final	1

Special Services

Activity	Duration (weeks)
Financial Feasibility	3
Sustainable Return on Investment (SROI) Analysis	3

A working day is defined as Monday through Friday, excluding City of Plano Holidays.

EXHIBIT "C"

COMPENSATION AND METHOD OF PAYMENT

SPRING CREEK CHANNEL AT COLLIN CREEK MALL - FEASIBILITY STUDY

WORK STAGE SUBMITTAL OR COMPLETION	TOTAL
BASIC SERVICES	
A. Project Management	\$4,769.00
B. Data Collection	\$8,046.00
C. Existing Conditions Analysis	\$22,923.00
D. Evaluation of Alternatives	\$38,462.00
E. Interdepartmental Coordination	\$14,365.00
F. Project Meetings	\$10,446.00
G. Presentation to City Council	\$7,979.00
H. Feasibility Study Report	<u>\$23,506.00</u>
Total Basic Fee	\$130,496.00
SPECIAL SERVICES	
A. Financial Feasibility	\$18,055.00
B. Sustainable Return on Investment (SROI) Analysis	\$8,625.00
Total Special Services	\$26,680.00
TOTAL PROJECT	\$157,176.00

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."
- 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.)

Coverages Required

Limits (Figures Denote Minimums)

<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

- ___ 18. Garagekeepers' Legal \$_____ - Comprehensive
 \$_____ - Collision
- ___ 19. Owners Protective Liability \$500,000 Combined single limits
- X 20. City named as additional insured on General Liability policy. This coverage is primary to all other coverages the City may possess.
- X 21. City provided with Waiver of Subrogation on Workers' Compensation or Alternative program if applicable.
- X 22. Ten (10) days notice of cancellation, non-renewal, endorsement required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- X 23. The City of Plano prefers an A.M. Best's Guide Rating of "A-", "VI" or better or Standard and Poors Rating AA or better; Authorized to do business in the State of Texas (not applicable for workers' compensation assigned through pool or alternative compensation programs).
- X 24. The Certificate must state project title and project number.
- X 25. Other Insurance Required:

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST AND COMPLIANCE WITH CITY OF PLANO'S EQUAL RIGHTS ORDINANCE

A. No Prohibited Interest

I, the undersigned, declare that I am authorized to make this statement on behalf of **Freese and Nichols, Inc.**, an "S" Corporation organized under the laws of the State of Texas, 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."

B. Equal Rights Compliance

1. Section 2-11(F) of the City Code of Ordinances reads as follows:

"It shall be unlawful for an employer to discriminate against any person on the basis of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status by the following actions or inactions:

- (a) for an employer to fail or refuse to hire, or to discharge, any person;
- (b) for an employer to discriminate against any person with respect to compensation, terms, conditions or privileges, of employment;
- (c) for an employer to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee;
- (d) for an employment agency to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (e) for an employment agency to classify or refer for employment any person, on the basis of a protected employment characteristic;
- (f) for a labor organization to exclude or expel from its membership, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (g) for a labor organization to fail or refuse to refer for employment any person because of a protected employment characteristic;
- (h) for a labor organization to limit, segregate or classify its members or applicants for membership, in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or
- (i) for a labor organization to cause or attempt to cause an employer to discriminate against a person in violation of this subsection;
- (j) for an employer, a labor organization or a joint labor-management committee, to discriminate against any person because of a protected employment characteristic in the admission to, or

- employment in, any program established to provide apprenticeship or other training;
- (k) for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic;
 - (l) for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic; or
 - (m) for a joint labor-management committee to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic.”

2. I am aware that my company, its directors, officers and employees must comply with Section 2-11(F) of the City Code of Ordinances unless an exclusion applies, as indicated below. Further, I understand that if Section 2-11(F) applies, I am entitled to apply to the City Manager for a waiver from signing this section of the affidavit based on a conflict with state or federal law. The contract will not be executed prior to the waiver issue being resolved.

Having made reasonable inquiry, I affirm that my company, its directors, officers and employees agree to comply with Section 2-11(F); or my company is excluded from this Ordinance based on the following: **[PLEASE CHECK BELOW, IF APPLICABLE]**

_____ A religious organization.

_____ A political organization.

_____ An educational institution.

_____ A branch or division of the United States government or any of its departments or agencies.

_____ A branch or division of the State of Texas or any of its departments, agencies or political subdivisions.

_____ A private club that is restricted to members of the club and guests and not open to the general public.

_____ Is not an “employer” under Section 2-11(F) because it has not had 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

[THIS SPACE INTENTIONALLY LEFT BLANK]

I also understand and acknowledge that a violation of Section 11.02 of the City Charter or Section 2-11(F) of the City Code of Ordinances, if applicable, at any time during the term of this contract may render the contract voidable by the City.

FREESE AND NICHOLS, INC.

By: _____
Signature

KELLY DILLARD, P.E.
Print Name

VICE PRESIDENT
Title

Date

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2016.

Notary Public, State of Texas