

**CITY OF SUGAR LAND STANDARD CONTRACT
FOR PROFESSIONAL ENGINEERING DESIGN
SERVICES FOR CITY FACILITIES**

Over \$50K
(Rev. 9-5-17)

I. Signatures. By signing below, the parties agree to the terms of this Contract.

CITY OF SUGAR LAND

ENGINEER:

By:

By:

Date:

Date:

Title:

Title:

Company:

APPROVED AS TO FORM:

Meredith Reed

II. General Information and Terms.

Engineer's Name and Address:

Freese and Nichols, Inc.
10497 Town and Country Way, Suite 600
Houston, TX 77024

Project Description:

Drainage Assessment of Settlers Park and
Sugar Lakes

Maximum Contract Amount:

\$170,700

Effective Date: On the latest date of the dates executed by both parties.

Termination Date: See III.F.

III. Standard Contractual Provisions.

A. Definitions: In this Contract:

Construction Documents means the plans, drawings, specifications, descriptions, or similar design related documents prepared by the Engineer for the Project under this Contract.

Contract means this Standard Contract for Professional Engineering Design Services, made in compliance with Chapter 2254 of the Texas Government Code.

Contractor means the person or entity that the City contracts with to construct the Project.

Engineer means the person or entity named in Part I of this Contract.

Project means the design and construction of the City improvements or structures described in this Contract.

B. Engineer's Services. The Engineer will provide to the City design services and any other related services for the Project as described in this Contract under the terms and conditions of this Contract.

C. Construction Documents. The Engineer's Construction Documents will be sufficiently accurate, detailed, and complete so that the Contractor may, if the Contractor faithfully follows the Construction Documents, construct and complete the Project without substantial defects and within the projected schedule and budget. In this paragraph, a "substantial defect" includes any condition of the Project that, upon completion, prevents or interferes with the Project's proper or intended operation, use, function, or maintenance. The Engineer will promptly correct any error found in the Construction Documents, including any error discovered after the City makes final payment to the Engineer, without payment of additional compensation.

D. Project Visits. If the Engineer's Additional Contract Documents provide for the Engineer to visit the Project site, the Engineer will visit the Project Work at intervals appropriate to the stage of the Project construction, but not less than the minimum number of visits specified in the Engineer's Additional Contract Documents, if any. The Engineer's visits will include visits at times when the significant elements of the Project construction, or representative samples thereof, are being performed so that the Engineer may determine if the Project is being constructed in substantial compliance with the Construction Documents. The Engineer will keep the City informed of the progress and quality of the Project construction as it is completed and promptly notify the City in writing of any Project construction that does not substantially comply with the Construction Documents.

E. Billing and Payment. The Engineer will bill the City for the services provided at intervals of at least 30 days, except for the final billing. The City will pay the Engineer for the services provided for in this Contract from current revenues available to the City, but all the City's

payments to the Engineer, including the time of payment and the payment of interest on overdue amounts, are subject to the provisions of Chapter 2251 of the Government Code. The City is not liable to the Engineer for any taxes which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any bill.

F. Termination Provisions.

(1) Unless terminated earlier as allowed by this Contract, this Contract terminates:

(a) On the termination date, if any, specified in the General Information in Part 1, but the obligation of a party to complete a contract requirement pending on the date of termination survives termination; or

(b) If there is no termination date specified in the General Information in Part 1, the Contract terminates when both parties have completed all their respective obligations under the Contract.

(2) The City's city manager may terminate this Contract during its term at any time for any reason by giving written notice to the Engineer not less than five business days prior to the termination date, but the City will pay the Engineer for all services rendered in compliance with this Contract to the date of termination.

(3) If the City's city council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the Contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution)

G. Liability and Indemnity. Any provision of the Contract is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives or limits either party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision.

H. Assignment. The Engineer may not assign this Contract without the City's prior written consent.

I. Law Governing and Venue. This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Fort Bend County, Texas.

J. Entire Contract. This Contract represents the entire Contract between the City and the Engineer and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.

K. Independent Contractor. The Engineer will perform the work under this Contract as an independent contractor and not as an employee of the City. The City has no right to supervise, direct, or control the Engineer or Engineer's officers or employees in the means, methods, or details of the work to be performed by Engineer.

L. Dispute Resolution Procedures. If either party disputes any matter relating to this Contract, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

M. Attorney's Fees. Should either party to this Contract bring suit against the other party for any matter relating to this Contract, neither party will seek or be entitled to an award of attorney's fees or other costs relating to the suit.

N. Severability. If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.

O. Contractual Limitations Period. Any provision of the Contract that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)

P. Conflicting Provisions. If there is a conflict between a provision in the Engineer's Additional Contract Documents and a provision in the remainder of this Contract, the latter controls.

Q. Standard of Care for Architects and Engineers. Services must be performed (1) with the professional skill and care ordinarily provided by competent licensed engineers or registered architects practicing in the same or similar locality and under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

R. Compliance with Laws. The Engineer must comply with the federal, state, and local laws, rules and regulations applicable to the Project and its services under this Contract.

S. Disclosure of Interested Persons for Council-Approved Contracts. Contracts that require City Council approval, such as contracts that exceed \$50,000, are subject to the requirements of Section 2252.908, Tex Gov't Code. Under the provisions of this statute:

- (1) The City may not enter into a contract with a business entity that requires Council approval unless the business entity submits a disclosure of interested persons at the time the business entity submits a signed contract to the City;
- (2) A disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (Commission) that includes:

- (a) A list of each interested party for the contract of which the contractor business entity is aware, an interested party being a person who has a controlling interest in the business entity or who actively participates in facilitating or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity; and
- (b) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

The Commission has approved a Certificate of Interested Persons form, which must be filled out, signed and notarized by the Contractor and submitted to the City at the time of execution of this Contract, along with the certification of filing generated from the Commission's website at <https://www.ethics.state.tx.us/tec/1295-Info.htm>. The Certificate of Interested Persons form is available on the Commission's website and the Contractor must follow the Commission's filing process adopted pursuant to the statute.

T. Prohibition on Contracts with Companies Boycotting Israel. Contracts for goods and services are subject to the requirements of Section 2270.002, Tex Gov't Code (H.B. 89). Under the provisions of this statute, the City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

The City has approved a verification form, which must be filled out and signed by the Contractor and submitted to the City at the time of execution of this Contract.

IV. Additional Terms or Conditions. None.

V. Additional Contract Documents. The following documents attached to this Contract are part of this Contract:

Exhibit A. Engineer's Additional Contract Documents:

- A-1. Certificate of Interested Persons with Certification of Filing
- A-2. House Bill 89 Verification (1 page)
- A-3. Freese and Nichols, Inc. Proposal Dated November, 2017 (6 pages)

Exhibit B. City's Additional Contract Documents:

- B-1. Requirements for all Insurance Requirements (4 pages)