

## PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

COUNTY OF BRAZORIA §

This Agreement is entered into by City of Angleton, Texas (Client) and Freese and Nichols, Inc. (FNI). In consideration of FNI providing professional services for Client and Client utilizing these services, the parties hereby agree:

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement, Client agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as Water and Wastewater Program.
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with the Project as set forth in Attachment SC – Scope of Services and Responsibilities of Client which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Client agrees to pay FNI for all professional services rendered under this Agreement on a time and materials basis in accordance with Attachment CO – Compensation which is attached and made a part of this Agreement. FNI shall perform professional services under this Agreement for a not to exceed fee of \$130,000.00.
- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement, as set forth in Attachment TC – Terms and Conditions of Agreement, shall govern the relationship between the Client and FNI.
- V. **GOVERNING LAW; VENUE:** This Agreement shall be administered and interpreted under the laws of the State of Texas. Venue of any legal proceeding involving this Agreement shall be in Brazoria County, Texas.
- VI. **NO ISRAEL BOYCOTT.** FNI hereby verifies that it does not boycott Israel and will not boycott Israel through this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, termination of business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- VII. **FOREIGN TERRORIST ORGANIZATIONS.** FNI represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- VIII. **IMMIGRATION.** FNI represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
- IX. **UNDOCUMENTED WORKERS.** FNI certifies that Service Provider does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Service Provider is convicted of a violation under 8 U.S.C. § 1324a(f), Service Provider shall repay the amount of the public subsidy provided under this Agreement, plus interest, at the rate of the prime rate plus six percent (6%) per annum, not later than the 120th day after the date the City notifies Service Provider of the violation.
- X. **NONDISCRIMINATION AGAINST FIREARM AND AMMUNITION INDUSTRIES.** FNI verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the Term of this Agreement against a

firearm entity or firearm trade association, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 19, 87th Legislature, Regular Session.

XI. **ANTI-BOYCOTT OF ENERGY COMPANIES.** FNI verifies that it does not boycott energy companies and will not boycott energy companies, as those terms are defined by Chapter 2274, Government Code, as enacted by S.B. 13, 87th Legislature, Regular Session, during the Term of this Agreement.

XII. **CONTRACT DATES:** The effective start date of this Agreement is February 15, 2023 . This Agreement shall expire on August 8, 2024.

Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the Client and FNI. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and FNI and not for the benefit of any other party. This Agreement constitutes the entire agreement between the Client and FNI and supersedes all prior written or oral understandings.

This contract is executed in two counterparts. IN TESTIMONY HEREOF, Agreement executed:

**CITY OF ANGLETON, TEXAS**

**FRESE AND NICHOLS, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

## SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT

### PROJECT UNDERSTANDING

The City of Angleton will be developing an application(s) to the Texas Water Development Board for funding of its proposed water and wastewater-related infrastructure and/or water quality improvement project(s). On behalf of the City, Freese and Nichols will assist in the following areas:

- Preparing applications
- Preparing all preliminary and final design plans and specification
- Assisting in bidding/negotiation
- Performing construction administration
- Determining the potential impact on residents and businesses within the City
- Conducting all necessary interim and final inspections

These services are being provided to assist the City in preparing its applications for funding and project implementation of one or more contracts, if awarded, for water and wastewater-related infrastructure and/or water quality improvement projects in the City of Angleton.

The advisory services are broken into three phases, each with a separate authorization. The first phase, and focus of this proposal, is anticipated to take 9 to 18 months (depending on funding program) and concentrate on the following items:

- Review the City's Capital Improvement Plan (CIP) to provide initial recommendations on packaging of projects.
- Assist the City with completing and submitting funding applications.
- Conduct a high-level assessment of the City's financial framework for foundational data required to analyze the future revenue expectations under current rates and determine the level of the capital program to meet the City's proposed rate increases. This includes any and all collaboration with the City Finance Director.

The second phase will focus on design and bid phase services for the projects selected by the City to fund and deliver.

The final phase of the work will focus on construction phase services for the projects bid out by the City. Construction phase services may include construction administration, construction management and inspection, and any required project closeout activities

**The cost and schedule defined in this proposal only addresses the CIP Review and Funding Strategy phase services. Fee for other services contemplated will be provided as projects are identified and funded.**

## ARTICLE I

**BASIC SERVICES:** FNI shall render the following professional services in connection with the development of the Project:

### A. CIP REVIEW AND FUNDING STRATEGY:

#### 1. Pre-Application Phase

- a. FNI will conduct a kickoff meeting with the City to review the scope, align on objectives for this phase.
- b. A bi-weekly, one-hour meeting with City staff is recommended to address any questions or follow-up items.
- c. FNI will provide administration and coordination services associated with this effort for the duration of Phase 1 services.
- d. FNI will review the City provided CIP documents (i.e., summary level project financials and detailed project worksheets capturing the scope, schedule and status of projects), and additional information provided by the City on the project's currently in design or construction that may require a regulatory review. The purpose of this review will be to 1) understand current project challenges, 2) develop an understanding of projects that could benefit from various funding approaches, 3) make recommendations for projects to deliver with CPD methods, and 4) provide packaging of the projects with consideration of funding methods to optimize the use of those methods.
- e. Development of Capital Program Scenarios:
  1. Projection of Revenues under Existing Rates: This task will include an analysis of historical water and wastewater volumes and customers. The results of this analysis will provide for the estimation of future revenues under existing rates.
  2. Development of Revenue Requirements and Cash Flow Analyses: The development of revenue requirements will be based on an examination of historical financial reports, current operating budgets, and the proposed capital improvement and replacement program. By combining the revenue and revenue requirements projections, cash flow analyses of water and wastewater utility operating, and capital financing needs will be developed. This analysis will include:
    - Projected Operation and Maintenance Expenses
    - Capital Expenditures
    - Debt Service Expenses
    - Reserve Funding
    - Projected Revenue Adjustments Needed to Fund Proposed Capital Program Levels

3. Capital Program Scenario Analyses: To determine the capital programs needed to meet specific rate adjustment levels, FNI will develop funding sources and uses to fund various capital program scenarios. These funding levels will be integrated into the revenue requirements and adjusted to meet pre-set rate adjustment levels. The results will provide us with the total capital program to be implemented under the required rate adjustments.

FNI will meet with the City to review the projected operating expenses and revenue at current rates and discuss the resulting expense and revenue calculations, along with the capital program scenarios identified at various rate adjustment levels. FNI will also coordinate with the City Finance Director as required throughout this process.

- f. At the conclusion of the review, a letter report summarizing the findings and recommendations will be provided to the City and presented to City Council for approval.
- g. Assist the City to complete and submit any required pre-application document(s) needed for a respective funding program such as a Project Information Form (PIF), Abridged Application, or similar.

## 2. Application Phase

- a. FNI will assist the City with the City Council Application Resolution.
- b. FNI will prepare the application and submittal, including coordination with the City.
- c. FNI will respond to funding agency comments and questions during the funding Application Administration and Technical Reviews.

## 3. Post-Application Phase

- a. The City will be required to prepare financial and legal documents associated with the funding closing process.
- b. FNI will provide input and guidance during the post-application processing in addition to any final modification to the project schedule and budget.

B. **PRELIMINARY PHASE:** FNI shall provide professional services in this phase as follows:

### 1. Study and Report Phase

- a. Advise Client as to the necessity of Client's providing or obtaining data or services from others and assist Client in connection with any such services.
- b. Provide analyses of Client's requirements for the Project, including planning, surveys, site evaluations and comparative studies of prospective sites and solutions.
- c. Prepare a Report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the considerations involved and some alternative solutions available to Client and setting forth FNI's findings and recommendations with opinions of probable construction costs for the Project, which includes estimates of contingencies and allowances for charges of professionals and consultants. Estimates of the cost of land and

rights-of-way, compensation for or damages to properties and interest and financing charges will be provided by Client or others so designated by Client. In arriving at its opinion of probable construction cost for the Project, FNI will include the estimates furnished by Client and will have no responsibility to determine the accuracy or validity of these estimates. The alternate solutions shall be limited to not more than three (3).

- d. Furnish three (3) printed copies and one (1) electronic copy (.pdf format) of the Report and present and review it in person with Client.

## 2. Preliminary Design Phase

After Client has accepted the report and has issued written authorization to proceed with the Preliminary Design Phase, FNI shall:

- a. Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.
- b. Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project Costs.
- c. Provide design submittal at 30% design milestone.
- d. Furnish three (3) printed copies and one (1) electronic copy (.pdf format) of the above preliminary design documents and present and review them with Client.

### C. **DESIGN PHASE:** FNI shall provide professional services in this phase as follows:

1. Prepare drawings, specifications, Construction Contract Documents, designs, and layouts of improvements to be constructed (if surveys are to be furnished, they are Special Services, pursuant to Article II, or Additional Services, pursuant to Article III).
2. Submit drawings, specifications, and Construction Contract Documents to the applicable federal, state and/or local agency(s) for approval, where required.
3. Furnish such information necessary to utility companies whose facilities may be affected or services may be required for the Project.
4. Prepare revised opinion of probable construction cost.
5. Prepare bidder's proposal forms (project quantities) of the improvements to be constructed.
6. Provide design submittals at 60%, 90% and 100% design milestones.
7. Furnish Client three (3) sets of printed copies and one (1) electronic copy (.pdf format) of drawings, specifications, and bid proposals marked "Preliminary" for approval by Client, for each design submittal as described above. Upon final approval by Client, FNI will provide Client one (1) set of reproducible "Final" drawings and one (1) set of specifications for reproduction by Client.

- D. **BID OR NEGOTIATION PHASE:** Upon completion of the design services and approval of “Final” drawings and specifications by Client, FNI shall provide professional services in this phase as follows:
1. Assist Client in securing bids. Prospective Bidders will comply with the City’s procurement ordinance. Provide a copy of the notice to bidders for Client to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by Client.
  2. Print Bid Documents and distribute to selected plan rooms, and to prospective bidders that respond to the Notice to Bidders. Send three (3) copies of Bid Documents to each of the following agencies: To be determined during the CIP Review and Funding Strategy Phase.
  3. Maintain information on entities that have been issued a set of bid documents. Distribute information on plan holders to interested contractors and vendors on request.
  4. Assist Client by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.
  5. At Client request, FNI will assist Client in the opening, tabulating, and analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by Client. Pre-qualification of all prospective bidders and issuing a list of eligible bidders prior to the bid opening is an additional service.
  6. Assist the Client in conducting a pre-bid conference for the construction projects and coordinate responses with Client. Response to the pre-bid conference will be in the form of addenda issued after the conference. Attend the tour of the project site after the pre-bid conference.
  7. Assist Client in the preparation of Construction Contract Documents for construction contracts. Provide ten (10) sets of Construction Contract Documents which include information from the apparent low bidders bid documents, legal documents, and addenda bound in the documents for execution by the Client and construction contractor. Distribute five (5) copies of these documents to the contractor with a notice of award that includes directions for the execution of these documents by the construction contractor. Provide Client with the remaining five (5) copies of these documents for use during construction. Additional sets of documents can be provided as an Additional Service.
  8. Furnish contractor copies of the drawings and specifications for construction pursuant to the General Conditions of the Construction Contract.

- D. **CONSTRUCTION PHASE GENERAL REPRESENTATION:** Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase general representation AND construction management and inspection services as described below.

In performing these services, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the 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's standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If General Conditions other than FNI's standard are used, the Client agrees to include provisions in the General Conditions that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the Client is named as an indemnified party.

FNI will be part of the Owner's Project Team (OPT) and will be the Design Professional, Construction Manager, Project Construction Manager, and other entities as identified FNI's standard General Conditions and Supplementary Conditions are to provide the services below:

1. Assist Client in conducting pre-construction conference(s) with the Contractor(s), review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.
2. Establish communication procedures with the Client and contractor. Submit monthly reports of construction progress. Reports will describe construction progress in general terms and summarize project costs, cash flow, construction schedule and pending and approved contract modifications.
3. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
4. Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that FNI recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
5. Make visits to the construction site (as distinguished from the continuous services of a Resident Project Representative) 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 Construction Contract Documents. In this effort FNI will endeavor to protect the Client against defects and deficiencies in the work of Contractors and will report any observed deficiencies to Client. Visits to the site in excess of the specified number are an Additional Service.



6. Notify the Client of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.
7. Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project. The cost of such quality control shall be paid by Client and is not included in the services to be performed by FNI.
8. Interpret the drawings and specifications for Client and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by Client, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
9. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the Client to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the Client. Documentation of field orders, where cost to Client is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the Client are an additional service. Substitutions of materials or equipment or design modifications requested by the Client are an additional service.
10. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the Client on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the Client if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.
11. Conduct, in company with Client's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two (2) trips are an Additional Service.
12. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Furnish Client three (3) sets of printed copies and one (1) electronic copy (.pdf format) of "Record Drawings."

## ARTICLE II

**SPECIAL SERVICES:** FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project:

1. Should the City be awarded funding, FNI will render the following services:

- a. Environmental planning services in accordance with the funding program requirements,
- b. Additional engineering planning services to meet funding program requirements,
- c. Additional design services to add any special supplemental conditions required by the funding program,
- d. Additional bidding services to coordinate approvals from the funding agency,
- e. Coordination with the funding agency for approvals of change orders,
- f. Services to request and gain approvals for funding releases including possible Build America, Buy America provision certifications and/or domestic iron and steel sourcing as well as Davis Bacon wage certifications,
- g. Completion and submittal of any funding-specialized invoices and/or reports, and
- h. Assistance with the project closeout procedures with the funding agency and gain approvals for the use of any funding remaining unused funds after project closeout.

### ARTICLE III

**ADDITIONAL SERVICES:** Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. Additional Services will be determined as work progresses.

### ARTICLE IV

**TIME OF COMPLETION:** FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the CIP Review and Funding Strategy services in 540 calendar days from Notice to Proceed. Additional Basic Services under this contract will be completed via future task orders as authorized by the City

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Client or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

### ARTICLE V

**RESPONSIBILITIES OF CLIENT:** Client shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Client recognizes and expects that change orders may be required to be issued during construction. The responsibility for the costs of change orders will be determined on the basis of applicable contractual obligations and professional liability standards. FNI will not be responsible for any change order costs due to unforeseen site conditions, changes made by or due to the Client or Contractor, or any change order costs not caused by the negligent errors or omissions of FNI. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, FNI is liable for change order costs. It is recommended that the Client budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.
- B. Designate in writing a person to act as Client'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 Client's policies and decisions with respect to FNI's services for the Project.

- C. Provide all criteria and full information as to Client'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 Client will require to be included in the drawings and specifications.
- D. 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.
- E. 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.
- F. 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 Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.
- G. 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.
- H. Client 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. Client 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 Client.
- I. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Client may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Client may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Client may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- J. If Client designates a person to serve in the capacity of Resident Project Representative who is not FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in an Attachment attached to and made a part of this Agreement before the Construction Phase of the Project begins. Said attachment shall also set forth appropriate modifications of the Construction Phase General Representation services as defined in Attachment SC, Article I, D, together with such adjustment of compensation as appropriate.
- K. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.
- L. Give prompt written notice to FNI whenever Client 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.

- M. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement, or other services as required.
- N. Bear all costs incident to compliance with the requirements of this Article V.

## ARTICLE VI

**DESIGNATED REPRESENTATIVES:** FNI and Client designate the following representatives:

**Client's Designated Representative:**

Chris Whittaker  
City Manager  
[cwhittaker@angleton.tx.us](mailto:cwhittaker@angleton.tx.us)  
979-849-4364 ext. 2112

**Client's Accounting Representative:**

Phillip Conner  
[pconner@angleton.tx.us](mailto:pconner@angleton.tx.us)

**FNI's Designated Representative:**

Chuck Wolf, P.E.  
[Chuck.Wolf@freese.com](mailto:Chuck.Wolf@freese.com)  
661-993-0028

**FNI's Accounting Representative:**

Marissa Mendoza  
[Marissa.Mendoza@freese.com](mailto:Marissa.Mendoza@freese.com)  
512-381-1837

**COMPENSATION**

Compensation to FNI for Basic Services in Attachment SC shall be computed on the basis of the following Schedule of Charges, but shall not exceed One Hundred Thirty Thousand Dollars (\$130,000).

If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the following Schedule of Charges.

<u>Position</u>	<u>Hourly Rate</u>	
	<u>Min</u>	<u>Max</u>
Professional 1	86	169
Professional 2	103	169
Professional 3	123	264
Professional 4	123	301
Professional 5	192	330
Professional 6	212	400
Construction Manager 1	93	109
Construction Manager 2	93	165
Construction Manager 3	132	165
Construction Manager 4	152	212
Construction Manager 5	175	251
Construction Manager 6	241	297
Construction Representative 1	76	93
Construction Representative 2	86	93
Construction Representative 3	106	156
Construction Representative 4	109	175
CAD Technician/Designer 1	66	129
CAD Technician/Designer 2	106	159
CAD Technician/Designer 3	146	212
Corporate Project Support 1	60	129
Corporate Project Support 2	73	185
Corporate Project Support 3	86	340
Intern / Coop	47	80

**Rates for In-House Services and Equipment**

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates		<u>B&amp;W</u>	<u>Color</u>	Valve Crew Vehicle (hour) \$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each) \$200
<u>Technology Charge</u>	Large Format (per sq. ft.)			Water Quality Meter (per day) \$100
\$8.50 per hour	Bond	\$0.25	\$0.75	Microscope (each) \$150
	Glossy / Mylar	\$0.75	\$1.25	Pressure Recorder (per day) \$100
	Vinyl / Adhesive	\$1.50	\$2.00	Ultrasonic Thickness Gauge (per day) \$275
	Mounting (per sq. ft.)	\$2.00		Coating Inspection Kit (per day) \$275
	Binding (per binding)	\$0.25		Flushing / Cfactor (each) \$500
				Backpack Electrofisher (each) \$1,000
				<u>Survey Grade</u> <u>Standard</u>
				Drone (per day) \$200 \$100
				GPS (per day) \$150 \$50

**OTHER DIRECT EXPENSES:**

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.10. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

**These ranges and/or rates will be adjusted annually in February. Last updated 2023.**



**TERMS AND CONDITIONS OF AGREEMENT**

1. **DEFINITIONS:** As used herein: (1) Client refers to the party named as such in the Agreement between the Client and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents; and (3) Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **INFORMATION FURNISHED BY CLIENT:** Client will 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. FNI shall have no liability for defects or negligence in the Services attributable to FNI’s reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by Client. To the fullest extent permitted by Texas law, Client agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs, and expenses arising therefrom. FNI shall disclose to Client, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications, or other information furnished by Client to FNI that FNI may reasonably discover in its review and inspection thereof. The parties acknowledge that indemnification by the City is prohibited by the Texas Constitution Sec. III, Art. 51.
3. **STANDARD OF CARE:** The standard of care for all professional Services performed or furnished by FNI under this Agreement will be the skill and care ordinarily used by members of the subject profession practicing under the same or similar license and circumstances at the same time and in the same locality. FNI makes no warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by FNI.

4. **INSURANCE:** FNI shall provide Client with certificates of insurance with the following minimum coverage:

<u>Commercial General Liability</u>	<u>Workers’ Compensation</u>
\$2,000,000 General Aggregate	As required by Statute
<u>Automobile Liability (Any Auto)</u>	<u>Professional Liability</u>
\$1,000,000 Combined Single Limit	\$3,000,000 Annual Aggregate

5. **CHANGES:** Client, without invalidating the Agreement, may order changes within the general scope of the Services required by the Agreement by altering, adding, or deducting from the Services to be performed. If any such change under this clause causes an increase or decrease in FNI’s cost or the time required for the performance of any part of the Services, an equitable adjustment will be made by mutual agreement and the Agreement will be modified in writing accordingly.

FNI will make changes to the drawings, specifications, reports, documents, or other deliverables as requested by Client. However, when such changes differ from prior comments, directions, instructions, or approvals given by Client or are due to causes not solely within the control of FNI, FNI shall be entitled to additional compensation and time required for performance of such changes to the Services authorized under this Agreement.

6. **OPINION OF PROBABLE CONSTRUCTION COSTS:** No fixed limit of project construction cost shall be established as a condition of the Agreement, unless agreed upon in writing and signed by the parties hereto. If a fixed limit is established, FNI shall be permitted to include contingencies for design, bidding, and price escalation in the construction contract documents to make reasonable adjustments in the scope of the Project to adjust the project construction cost to the fixed limit. Such contingencies may include bid allowances, alternate bids, or other methods that allow FNI to

determine what materials, equipment, component systems, and types of construction are to be included in the construction contract documents. Fixed limits, if any, shall be increased by the same amount as any increase in the contract price after execution of the construction contract. Any such change must be communicated to Client in writing.

FNI will furnish an opinion of probable construction or program cost based on present day pricing, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. 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 contractors' methods of determining prices. Accordingly, FNI cannot and does not warrant or represent that bids or cost proposals will not vary from the Client's project budget or from any estimate or opinion of probable construction or program cost prepared by or agreed to by FNI.

- PAYMENT:** Progress payments may be requested by FNI based on the amount of Services completed. Payment for the Services of FNI shall be due and payable upon submission of a statement for Services to Client and in acceptance of the Services as satisfactory by Client. Statements for Services shall not be submitted more frequently than monthly. Any applicable taxes imposed upon Services, expenses, and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.

If Client fails to make any payment due FNI for Services, expenses, and charges within 30 days after receipt of FNI's statement for Services therefore, the amounts due FNI will be increased at the rate of 1 percent per month from said 30th day, and, in addition, FNI may, after giving 7 days' written notice to Client, suspend Services under this Agreement until FNI has been paid in full for all amounts due for Services, expenses, and charges.

- If FNI's Services are delayed or suspended by Client or are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised. No such adjustment will be effective until Client is notified in writing regarding the adjustment, and the notice shall be made prior to a payment request by FNI or as soon as the necessity for the adjustment occurs.**OWNERSHIP OF DOCUMENTS:** All drawings, reports, data, and other project information developed in the execution of the Services provided under this Agreement shall be the property of Client upon payment of FNI's fees for Services. FNI may retain copies for record purposes. Client agrees such documents are not intended or represented to be suitable for reuse by Client or others. Any reuse by Client or by those who obtained said documents from Client without written verification or adaptation by FNI, will be at the Client's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. To the fullest extent permitted by Texas law, Client shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data, and other project information in the execution of the Services provided under this Agreement in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to Client, and FNI shall indemnify and hold harmless Client from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting



therefrom. The parties acknowledge and agree that indemnification by the City is prohibited by the Texas Constitution Sec. III, Art. 51.

9. **TERMINATION:** The obligation to provide Services under this Agreement may be terminated by either party upon 10 days' written notice. In the event of termination, FNI will be paid for all Services rendered and reimbursable expenses incurred to the date of termination
10. **CONSTRUCTION REPRESENTATION:** If required by the Agreement, FNI will furnish construction representation according to the defined scope for these Services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the construction contract documents. In performing these Services, FNI will report any observed deficiencies to Client, however, it is understood that FNI does not guarantee the contractor's performance, nor is FNI responsible for the supervision of the contractor's operation and employees. FNI shall not be responsible for the contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident to the work of the contractor. 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. If Client designates a resident project representative that is not an employee or agent of FNI, the duties, responsibilities, and limitations of authority of such resident project representative will be set forth in writing and made a part of this Agreement before the construction phase of the Project begins.
11. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** Client agrees to include provisions in the general conditions of the construction contract that name FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by the contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the indemnification provisions where the Client is named as an indemnified party.
12. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the project site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing the Services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.
13. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, Client determines that any subcontractor for FNI is incompetent or undesirable, Client shall notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Agreement shall create any contractual relation between any subcontractor and Client.
14. **PURCHASE ORDERS:** If a purchase order is used to authorize FNI's Services, only the terms, conditions, and instructions typed on the face of the purchase order shall apply to this Agreement. Should there be any conflict between the purchase order and the terms of this Agreement, then this Agreement shall prevail and be determinative of the conflict.

15. **CONSEQUENTIAL DAMAGES:** In no event shall FNI be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental, or consequential damages (such as loss of product, loss of use of equipment or systems, loss of anticipated profits or revenue, non-operation or increased expense of operation), arising out of, resulting from, or in any way related to this Agreement or the Project.
16. **ARBITRATION:** No arbitration, arising out of or relating to this Agreement, involving one party to this Agreement may include the other party to this Agreement without their approval.
17. **SUCCESSORS AND ASSIGNMENTS:** Client and FNI and the partners, successors, executors, administrators, and legal representatives of each are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither Client nor FNI shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of Services hereunder.

18. **TWDB CONTRACTING GUIDELINES:** This Agreement shall be subject to the TWDB Subcontracting Guidelines specified below. FNI and its subconsultants, if any, will be required to incorporate these Subcontracting Guidelines into any and all subcontracts to this Agreement. FNI agrees and acknowledges that it is subject to all applicable subcontracting requirements of the contract between Client and the TWDB and adopts those requirements into this Agreement by reference.

The following provisions are required in all TWDB subcontracts:

- i. **Contract Dates:** Agreement should include a starting date and ending date.
- ii. **Contract Amount:** Agreement should list the total value of the subcontract.
- iii. **Terms of Reimbursement:** Subcontracts must be cost reimbursable. Lump sum agreements are not permitted for services. Please also note that the TWDB does not reimburse "handling costs" (mark-ups) on any expenses. Any eligible travel expenses related to a subcontract may be reimbursed at the current rate for State of Texas employees which can be found at:  
<https://fmx.cpa.state.tx.us/fmx/travel/texttravel/trans/personal.php>
- iv. **Scope of Work:** The terms of the scope of work must be consistent with the scope of the prime agreement.
- v. **Task Budget:** As appropriate. The task budget must be consistent with the task budget specified in the TWDB prime agreement.
- vi. **Expense Budget:** As appropriate. The expense budget must be consistent with the expense budget specified in the TWDB prime agreement.
- vii. **Signatures:** Each subcontract must be executed appropriately by signature, by each party to the agreement.

Specific Clause Requirements

The requirements listed below must be included in TWDB subcontracting agreements and shall apply to this Agreement to the extent that FNI and its subconsultant(s) are considered a Subcontractor or Sub-Subcontractor under the applicable TWDB contract.

- i. **State Auditor:** By executing this Contract, the SUBCONTRACTOR accepts the authority of the State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this contract. The SUBCONTRACTOR shall comply with and cooperate in any such investigation or audit. The SUBCONTRACTOR agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The SUBCONTRACTOR also agrees to include a provision in any subcontract related to this contract that requires the SUBCONTRACTOR to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract.
- ii. **Financial Records:** The SUBCONTRACTOR (S) and its contracted parties shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by the EXECUTIVE ADMINISTRATOR of the TWDB. Accounting by the SUBCONTRACTOR (S) and its contracted parties shall be in a manner consistent with generally accepted accounting principles.
- iii. **No Debt Against the State:** This SUBCONTRACT and Agreement shall not be construed as creating any debt by or on behalf of the State of Texas and the TWDB, and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this SUBCONTRACT transcends the biennium in which this SUBCONTRACT is entered into, this SUBCONTRACT is specifically contingent upon the continued authority of the TWDB and appropriations therefore.
- iv. **Licenses, Permits and Insurance:** For the purpose of this CONTRACT, the SUBCONTRACTOR (S) will be considered an independent SUBCONTRACTOR and therefore solely responsible for liability resulting from negligent acts or omissions. The SUBCONTRACTOR (S) shall obtain all necessary insurance, in the judgment of the SUBCONTRACTOR (S), to protect themselves, the CONTRACTOR, the TWDB, and employees and officials of the TWDB from liability arising out of this CONTRACT. The SUBCONTRACTOR (S) shall indemnify and hold the TWDB and the State of Texas harmless, to the extent the SUBCONTRACTOR (S) may do so in accordance with state law, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the SUBCONTRACTOR (S), arising out of the activities under this CONTRACT.

The SUBCONTRACTOR (S) shall be solely and entirely responsible for procuring all appropriate licenses and permits, which may be required by any competent authority for the SUBCONTRACTOR (S) to perform the subject work.

- v. **Ownership (Does Not Apply to Regional Water Planning Agreements):** The TWDB shall have unlimited rights to technical or other data resulting directly from the performance of services under this CONTRACT. It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this CONTRACT and developed by the SUBCONTRACTOR (S) or its contracted parties pursuant to this CONTRACT shall become the joint property of the SUBCONTRACTOR (S) and the TWDB. These materials shall not be copyrighted or patented by the SUBCONTRACTOR (S) or by any consultants involved in this CONTRACT unless the EXECUTIVE ADMINISTRATOR of the TWDB approves in writing the right to establish

copyright or patent; provided, however, that copyrighting or patenting by the SUBCONTRACTOR (S) or its SUB-SUBCONTRACTORS will in no way limit the TWDB 's access to or right to request and receive or distribute data and information obtained or developed pursuant to this CONTRACT. Any material subject to a TWDB copyright and produced by the SUBCONTRACTOR (S) or TWDB pursuant to this CONTRACT may be printed by the SUBCONTRACTOR (S) or the TWDB at their own cost and distributed by either at their discretion. The SUBCONTRACTOR (S) may otherwise utilize such material provided under this CONTRACT as it deems necessary and appropriate, including the right to publish and distribute the materials or any parts thereof under its own name, provided that any TWDB copyright is appropriately noted on the printed materials.

The SUBCONTRACTOR (S) and its contracted parties agree to acknowledge the TWDB in any news releases or other publications relating to the work performed under this CONTRACT.

- vi. **Ownership (Only Applies to Regional Water Planning Agreements):** It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this contract and developed by the SUBCONTRACTOR pursuant to this contract shall become the joint property of the REGIONAL WATER PLANNING GROUP, SUBCONTRACTOR and its SUB-SUBCONTRACTOR(S), and the Texas Water Development Board. These materials shall not be copyrighted or patented by the SUBCONTRACTOR. SUBCONTRACTOR agrees that neither the Regional Water Planning Group nor the Texas Water Development Board are parties to this contract and agrees that that these entities have no liability under the terms of this contract. The Texas Water Development Board is solely a third-party beneficiary under this contract.
- vii. **Compliance with Board Rules and State Law (Only Applies to Regional Water Planning Agreements):** The SUB-CONTRACTOR (S) shall comply with BOARD rules and adhere to all requirements in state law pertaining to the procurement of professional services.