

## PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF BURLESON** (the “City”), a home rule municipal corporation situated in portions of Tarrant and Johnson Counties, Texas and Freese and Nichols, Inc (“Consultant”).

### **1. SCOPE OF SERVICES.**

Attached hereto and incorporated for all purposes incident to this Agreement is **Attachment A** more specifically describing the services to be provided hereunder.

### **2. TERM.**

This Agreement shall commence upon execution by the parties (the “Effective Date”) and shall be for three (3) years unless terminated earlier in accordance with the provisions of this Agreement. Those obligations concerning warranties and representations which by their nature should survive termination of this Agreement, shall survive termination of this Agreement, including Articles 5, 6, 8, 12, 14-17, and 25-26.

### **3. COMPENSATION.**

This is a fixed-price contract. The City shall pay Consultant an amount not to exceed Ninety Thousand and no /100 dollars in accordance with the fee schedule incorporated herein as **Attachment CO**, and subject to the other terms and conditions of this Agreement, in exchange for completion of all tasks and delivery of all services listed in Attachment CS, Scope of Work. In the event of partial performance the City shall pay Consultant for only the itemized tasks completed and delivered. Consultant shall not perform any additional services for the City not specified by this Agreement unless the City requests and approves in writing the additional services and costs for such services. The City shall not be liable for any additional expenses of Consultant not specified by this Agreement unless the City first duly approves such expenses in a contract amendment executed by the City Manager or the City Manager’s designee.

The Consultant shall submit monthly payment invoices to the City. Invoices shall contain a detailed breakdown to include: task or deliverables to the City and date provided for the billing period, the amount billed for each task or deliverable, and the total amount due.

Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Consultant’s invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

### **4. TERMINATION.**

4.1. Written Notice.

The City or Consultant may terminate this Agreement at any time and for any reason by providing the other party with 30 days written notice of termination.

4.2 Non-appropriation of Funds.

In the event no funds or insufficient funds are appropriated by the City in any fiscal period for any payments due hereunder, City will notify Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

4.3 Duties and Obligations of the Parties.

In the event that this Agreement is terminated prior to the end of the term of this agreement as provided in Article 2, the City shall pay Consultant for services actually rendered or consultant shall reimburse the City for services paid for but not actually rendered, up to the date of notice of termination.

**5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.**

Consultant hereby warrants to the City that Consultant has made full disclosure in writing of any existing or potential conflicts of interest related to Consultant's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Consultant hereby agrees immediately to make full disclosure to the City in writing. Consultant, for itself and its officers, agents and employees, further agrees that it shall treat all information provided to it by the City as confidential and shall not disclose any such information to a third party without the prior written approval of the City. Consultant shall store and maintain City information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Consultant shall notify the City immediately if the security or integrity of any City information has been compromised or is believed to have been compromised.

**6. RIGHT TO AUDIT.**

Consultant agrees that the City shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the consultant involving transactions relating to this Contract at no additional cost to the City. Consultant agrees that the City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in all its subcontractor agreements hereunder a provision to the effect that the subcontractor agrees that the City shall, until expiration of three (3) years after final payment of the subcontract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract, and further that City shall have access during normal working hours to all subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. City shall give subcontractor reasonable notice of intended audits.

**7. INDEPENDENT CONTRACTOR.**

It is expressly understood and agreed that Consultant shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, Consultant shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, and subcontractors. Consultant acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its officers, agents, servants and employees, and Consultant, its officers, agents, employees, servants, contractors, and subcontractors. Consultant further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Consultant.

**8. CHARACTER OF SERVICES AND INDEMNIFICATION.**

8.1 Character of Services.

Consultant shall perform as an independent contractor all services under this Agreement with the professional skill and care ordinarily provided by competent architects, engineers, or landscape architects practicing under the same or similar circumstances and professional license. Further, Consultant shall perform as an independent contractor all services under this Agreement as expeditiously as possible as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Provided, however, if this is a construction contract for architectural or engineering services or a contract related to the construction or repair of an improvement to real property that contains architectural or engineering services as a component part, the architectural or engineering services must be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license. Consultant shall provide professional services necessary for the work described in Attachment "A," and incorporated herein and made a part hereof as if written word for word; provided, however, that in case of conflict in the language of Attachment "A" the terms and conditions of this Agreement shall be final and binding upon both parties hereto.

8.2 Indemnification.

**CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND**

**PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING REASONABLE ATTORNEY FEES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OF OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT, WHETHER SAID NEGLIGENCE IS SOLE NEGLIGENCE, CONTRACTUAL COMPARATIVE NEGLIGENCE, CONCURRENT NEGLIGENCE OR ANY OTHER FORM OF NEGLIGENCE. IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF CONSULTANT AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. NOTHING IN THIS PARAGRAPH IS INTENDED TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW OR WAIVE ANY DEFENSES OF CONSULTANT OR CITY UNDER TEXAS LAW. THIS PARAGRAPH SHALL NOT BE CONSTRUED FOR THE BENEFIT OF ANY THIRD PARTY, NOR DOES IT CREATE OR GRANT ANY RIGHT OR CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR CONSULTANT.**

**CONSULTANT WARRANTS THAT NO MUSIC, LITERARY OR ARTISTIC WORK OR OTHER PROPERTY PROTECTED BY COPYRIGHT WILL BE REPRODUCED OR USED, NOR WILL THE NAME OF ANY ENTITY PROTECTED BY TRADEMARK BE REPRODUCED OR USED BY CONSULTANT UNLESS CONSULTANT HAS OBTAINED WRITTEN PERMISSION FROM THE COPYRIGHT OR TRADEMARK HOLDER AS REQUIRED BY LAW, SUBJECT ALSO TO CITY'S CONSENT. CONSULTANT COVENANTS TO COMPLY STRICTLY WITH ALL LAWS RESPECTING COPYRIGHTS, ROYALTIES, AND TRADEMARKS AND WARRANTS THAT IT WILL NOT INFRINGE ANY RELATED STATUTORY, COMMON LAW OR OTHER RIGHT OF ANY PERSON OR ENTITY IN PERFORMING THIS AGREEMENT. CONSULTANT WILL INDEMNIFY AND HOLD CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM ALL CLAIMS, LOSSES AND DAMAGES (INCLUDING REASONABLE ATTORNEY'S FEES) WITH RESPECT TO SUCH COPYRIGHT, ROYALTY OR TRADEMARK RIGHTS TO THE EXTENT CAUSED BY CONSULTANT OR FOR WHOM CONSULTANT IS LEGALLY LIABLE.**

**THE PROVISIONS OF THIS SECTION ARE INTENDED TO ONLY PROVIDE INDEMNIFICATION TO THE EXTENT ALLOWED BY TEXAS LOCAL GOV'T CODE SEC. 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOV'T CODE SEC. 271.904 WILL STILL NAME CITY AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY.**

**9. ASSIGNMENT AND SUBCONTRACTING.**

Consultant shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the City. If the City grants consent to an assignment, the assignee shall execute a written agreement with the City and the Consultant under which the assignee agrees to be bound by the duties and obligations of Consultant under this Agreement. The Consultant and Assignee shall be jointly liable for all obligations under this Agreement prior to the assignment. If the City grants consent to a subcontract, the subcontractor shall execute a written agreement with the Consultant referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of the Consultant under this Agreement as such duties and obligations may apply. The Consultant shall provide the City with a fully executed copy of any such subcontract.

**10. INSURANCE.**

Consultant shall provide the City with certificate(s) of insurance documenting policies of the following minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

10.1 Coverage and Limits

- (a) Commercial General Liability
  - \$1,000,000 Each Occurrence
  - \$1,000,000 Aggregate
  
- (b) Automobile Liability
  - \$1,000,000 Each accident on a combined single limit basis or
  - \$250,000 Bodily injury per person
  - \$500,000 Bodily injury per person per occurrence
  - \$100,000 Property damage

Coverage shall be on any vehicle used by the Consultant, its employees, agents, representatives in the course of the providing services under this Agreement. "Any vehicle" shall be any vehicle owned, hired and non-owned.

- (c) Worker's Compensation
  - Statutory limits
  - Employer's liability
    - \$100,000 Each accident/occurrence
    - \$100,000 Disease - per each employee
    - \$500,000 Disease - policy limit

This coverage may be written as follows:

Workers' Compensation and Employers' Liability coverage with limits consistent

with statutory benefits outlined in the Texas workers' Compensation Act (Art. 8308 – 1.01 et seq. Tex. Rev. Civ. Stat.) and minimum policy limits for Employers' Liability of \$100,000 each accident/occurrence, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee

(d) Errors & Omissions (Professional Liability):

\$1,000,000 Per Claim and Aggregate

If coverage is written on a claims-made basis, the retroactive date shall be coincident with or prior to the date to the contractual agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual agreement and for five (5) years following completion of the services provides under the contractual agreement or for the warranty period, which ever is longer. An annual certificate of insurance submitted to the City shall evidence coverage.

## 10.2 Certificates.

Certificates of Insurance evidencing that the Consultant has obtained all required insurance shall be delivered to the City prior to Consultant proceeding with any work pursuant to this Agreement. All applicable policies shall be endorsed to name the City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement. The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage. A minimum of thirty (30) days notice of cancellation or reduction in limits of coverage shall be provided to the City. Ten (10) days notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto Consultant's insurance policies. Notice shall be sent to the Purchasing Manager, City of Burleson, 141 W. Renfro, Burleson, Texas 76028, with copies to the City Attorney at the same address.

## 10.3 Additional Insurance Requirements.

The insurance required herein must be provided by an insurer licensed to do business in the State of Texas. The insurance required herein must be provided by an insurer rated by the A.M. Best as "A-" or better or are rated "A" by Standard and Poor's. The insurance required herein shall be in full force and effect at all times during this Agreement.

## 11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

Consultant agrees to comply with all applicable federal, state and local laws, ordinances,

rules and regulations. If the City notifies Consultant of any violation of such laws, ordinances, rules or regulations, Consultant shall immediately desist from and correct the violation.

**12. NON-DISCRIMINATION COVENANT.**

Consultant, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Consultant’s duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. If any claim arises from an alleged violation of this non-discrimination covenant by Consultant, its personal representatives, assigns, subcontractors or successors in interest, Consultant agrees to assume such liability and to indemnify and defend the City and hold the City harmless from such claim.

**13. NOTICES.**

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Burleson  
City Manager  
Attn: Tommy Ludwig  
141 W. Renfro St.  
Burleson, TX 76028

Freese and Nichols, Inc		
Scott Hubley		
801 Cherry St Ste 2800		
Fort Worth	TX	76102

**14. GOVERNMENTAL POWERS.**

It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

**15. NO WAIVER.**

The failure of the City or Consultant to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of the City's or Consultant's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

**16. GOVERNING LAW / VENUE.**

This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Johnson County, Texas or the United States

District Court for the Northern District of Texas.

**17. SEVERABILITY.**

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**18. FORCE MAJEURE.**

The City and Consultant shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

**19. HEADINGS NOT CONTROLLING.**

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**20. REVIEW OF COUNSEL.**

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

**21. AMENDMENTS / MODIFICATIONS / EXTENSIONS.**

No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.

**22. ENTIRETY OF AGREEMENT.**

This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Consultant, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

**23. SIGNATURE AUTHORITY.**

The person signing this agreement hereby warrants that he/she has the legal authority to



execute this agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

**24. NO WAIVER OF GOVERNMENTAL IMMUNITY.**

Nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein.

**25. MANDATORY OWNERSHIP DISCLOSURE PROVISION.**

Consultant shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to City at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.

**26. MANDATORY ANTI-ISRAEL BOYCOTT PROVISION.**

Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate:

- i. Pursuant to Section 2271.002 of the Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- ii. Pursuant to SB 13, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iii. Pursuant to SB 19, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iv. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Subchapter F, Chapter 2252, Texas Government Code; or (ii) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**27. NON-EXCLUSIVITY.**

Agreement is non-exclusive and City may enter into a separate Agreement with any other person or entity for some or all of the work to be performed under Agreement.

**28. NO THIRD-PARTY BENEFICIARIES.**

Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement, provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.

**29. BASIC SAFEGUARDING OF CONTRACTOR INFORMATION SYSTEMS.**

The Consultant shall apply basic safeguarding requirements and procedures to protect the Consultant's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that is necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

Consultant shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

**30. OWNERSHIP OF DOCUMENTS.**

All documents and materials prepared by Consultant under the terms of this Agreement are the City's property from the time of preparation. Consultant will deliver copies of the documents and materials to the City or make them available for inspection whenever requested. City has the right to make duplicate copies of such documents or materials for its own file or use for any other such purposes as the City deems necessary and there shall be no additional costs incurred because of such copying or use.

**31. COUNTERPARTS; PDF SIGNATURES.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

*The remainder of this page is left intentionally blank*

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement:

**CITY OF BURLESON:**

**Freese and Nichols, Inc**

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

Signed by:  
By: Scott Hubley  
0FF9505DEB2742E...

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

Name: Scott Hubley

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

Title: Vice-President

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

Date: 10/18/2024

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney, Assistant City Attorney,  
or Deputy City Attorney

Compensation to FNI for Special Services in Attachment SC shall be computed on the basis of the following Schedule of Charges, but shall not exceed Ninety Thousand Dollars (\$90,000).

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	98	195
Professional 2	132	214
Professional 3	150	327
Professional 4	173	357
Professional 5	255	387
Professional 6	259	480
Construction Manager 1	128	180
Construction Manager 2	132	222
Construction Manager 3	165	222
Construction Manager 4	192	289
Construction Manager 5	229	338
Construction Manager 6	304	402
Construction Representative 1	87	102
Construction Representative 2	102	132
Construction Representative 3	139	210
Construction Representative 4	139	210
CAD Technician/Designer 1	94	135
CAD Technician/Designer 2	113	222
CAD Technician/Designer 3	147	282
Corporate Project Support 1	79	177
Corporate Project Support 2	90	259
Corporate Project Support 3	113	375
Intern / Coop	60	105

**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) \$500
<b><u>Technology Charge</u></b>	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	Ultrasonic Thickness Guage (per day) \$275
	Vinyl / Adhesive	\$1.50	\$2.00	Coating Inspection Kit (per day) \$275
				Flushing / Cfactor (each) \$500
	Mounting (per sq. ft.)	\$2.00		Backpack Electrofisher (each) \$1,000
	Binding (per binding)	\$0.25		
				<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 2024.**

## **SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT**

### PROJECT UNDERSTANDING

Freese and Nichols, Inc. (FNI) shall provide the following review services to the City of Burleson (CITY) for a compensation amount of Thirty Thousand Dollars (\$30,000) per year for three (3) years, totaling Ninety Thousand Dollars (\$90,000).

### ARTICLE I

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

A. DRAINAGE REVIEW SERVICES: FNI shall provide professional services in this phase as follows:

1. Attend a pre-design meeting with applicants if requested by CITY Staff.
2. Attend Planning and Zoning Commission meeting as required.
3. Attend meetings with TxDOT as required.
4. Attend meetings with FEMA as required.
5. Attend meetings with other agencies (Corps of Engineers, franchise utilities, etc.) as required.
6. Be available to meet with staff or applicants outside of time scheduled to discuss specific applications.
7. Review current CITY practices, policies, criteria, guidelines, submittal checklists, rough proportionality calculations and public improvement agreements, etc. on a continual basis and make recommendations for modifications.
8. Be available for CITY meetings or retreats to discuss planning or review process.
9. Provide a monthly one-page report to CITY summarizing the plans reviewed and services performed for the month.

B. GENERAL CONSTRUCTION PLANS/SPECIFICATIONS REVIEWS: FNI shall provide professional services in this phase as follows:

1. Review subject construction plans, specifications, details, and contract documents for compliance with the approved preliminary plans and final plats. Review for compliance with CITY's design and construction details standards.
2. Review the impacts on adjacent landowners.
3. Review calculations in the plans for accuracy and compliance with CITY standards and acceptable standard engineering practices.
4. Review drainage studies, reports, calculations, and computer models for compliance with City of Burleson design requirements, and applicable state and federal requirements. Ensure that drainage study findings are consistent with improvements shown on construction plans.
5. Develop comments for the subject construction plans and studies, based upon the review. Include applicable comments previously generated from CITY review of the project. Submit copies of the review to CITY.
6. Correspond with the developer's architect/engineer as needed for implementation of the comments from CITY and CONSULTANT, as requested by City Development Review Administrator.
7. Document all meetings and telephone calls with applicants.

C. FEMA FLOOD STUDY REVIEW: FNI shall provide professional services in this phase as follows:

1. Review CLOMR application from the applicant for compliance with the CITY's Development Code, Drainage Criteria Manual, Flood Protection and Prevention Ordinance and applicable FEMA regulations. Assist CITY's Floodplain Administrator with the submittal of the approved CLOMR application to FEMA for review. Review applicable plats for coordination of drainage easements and finished floor elevations with the approved CLOMR application.
2. Review LOMR applications from the applicant for compliance with CITY's Development Code, Drainage Criteria Manual, Flood Protection and Prevention Ordinance and applicable FEMA regulations. Assist CITY's Flood Plan Administrator with the submittal of the approved LOMR application to FEMA for review. Review applicable plats for coordination of drainage easements with the approved LOMR application.

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. Funding Application Development, through programs such as the TWDB FIF or the FEMA FMA Grant Program
  - a. Coordination and Meetings with the City regarding applications
  - b. Update Opinion of Probable Construction Costs (OPCC) for projects identified for grant opportunity
  - c. Application Process Support

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 to be performed by FNI, if authorized by Client, are described as follows:

1. Assisting CITY in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by CONSULTANT on a fee basis (not to exceed \$200 per hour) negotiated by the respective parties and executed as an Amendment to this AGREEMENT.
2. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
3. Providing basic or additional services on an accelerated time schedule. The scope of this service includes cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by CITY.
4. Attending meetings and providing assistance, as requested by CITY, with agencies other than those specified in Article I.
5. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
6. Construction project inspection or field review of design projects.
7. Engineering design of plans, specification and estimates.

8. Engineering design or consultation in specialized disciplines, such as structural, mechanical, electrical or plumbing or architectural planning or design.
9. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the CITY.
10. Field surveying required for the preparation of designs and drawings.
11. Field layouts or the furnishing of construction line and grade surveys.
12. GIS mapping services or assistance with these services.
13. Making property, boundary, right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
14. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by CITY.
15. Providing renderings, model, and mock-ups requested by the CITY.
16. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by CITY or 2) due to other causes not solely within the control of CONSULTANT.
17. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required in connection with the replacement of such Work.
18. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by CITY.
19. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
20. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
21. Conducting pilot plant studies or tests.
22. Preparing Operation and Maintenance Manuals or conducting operator training.
23. Preparing data and reports for assistance to CITY in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
24. Furnishing the services of a Resident Project Representative to act as CITY's on-site representative during the Construction Phase. The Resident Project Representative will act as directed by CONSULTANT in order to provide more extensive representation at the Project site during Construction Phase. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative and assistants, CONSULTANT shall endeavor to provide further protection for CITY against defects and deficiencies in the work.

If CITY provides personnel to support the activities of the Resident Project Representative who is CONSULTANT or CONSULTANT's agent or employee, the duties, responsibilities and limitations of authority of such personnel will be set forth in an Attachment attached to and made a part of this AGREEMENT before the services of such personnel are begun. It is understood and agreed that such personnel will work under the direction of and be responsible to the Resident Project Representative. CITY agrees that whenever CONSULTANT informs him in writing that any such personnel provided by the CITY are, in his opinion, incompetent, unfaithful or disorderly, such

- personnel shall be replaced.
25. Furnishing Special Inspections required under chapter 17 of the International Building Code. These Special Inspections are often continuous, requiring an inspector dedicated to inspection of the individual work item, and they are in addition to General Representation and Resident Representation services noted elsewhere in the contract. These continuous inspection services can be provided by CONSULTANT as an Additional Service.
  26. Preparation of Conformed or "As Bid" plans and specifications for use during the construction phase. These documents shall involve the incorporation of addenda items into the Contract Documents through modification of the electronic files and reprinting of the plans and specifications inclusive of the incorporated changes.
  27. Assisting CITY in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
  28. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
  29. Assisting CITY in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by CONSULTANT on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
  30. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
  31. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
  32. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
  33. Services required to resolve bid protests or to rebid the projects for any reason.
  34. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
  35. Providing basic or additional services on an accelerated time schedule. The scope of this service includes cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the CITY.
  36. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
  37. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of CONSULTANT.
  38. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
  39. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
  40. Provide Geotechnical investigations, studies and reports.

#### ARTICLE IV

**TIME OF COMPLETION:** CONSULTANT agrees to provide initial project review within 14 calendar days after receipt of a project submittal.



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. 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.
- B. 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.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as 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.
- F. 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.
- G. 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.
- H. 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.

- I. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- J. 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 – [Michelle McCullough, P.E., CFM, 141 West Renfro, Burleson, TX 76028; 817-426-9616, and \[mmccullough@burlesontx.com\]\(mailto:mmccullough@burlesontx.com\)](#)

FNI's Designated Representative – [Bethany Fleitman, P.E., CFM, 801 Cherry Street, Suite 2800, Fort Worth, TX 76102; 806-686-2709, and \[bethany.fleitman@freese.com\]\(mailto:bethany.fleitman@freese.com\)](#)

FNI's Accounting Representative – [Erin Westbrook, 801 Cherry Street, Suite 2800, Fort Worth, TX 76102; 817-735-7395, and \[erin.westbrook@freese.com\]\(mailto:erin.westbrook@freese.com\)](#)