

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 terminate upon completion of the work specified in the scope of services 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 **(Six Hundred Twenty Eight Thousand One Hundred Fifty Dollars) (\$628,150 and 0/100)** accordance with the fee schedule incorporated herein as **Attachment A**, 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 A, 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’s Office
Attn: Bryan Langley
141 W. Renfro St.
Burleson, TX 76028

To CONSULTANT:

Freese and Nichols		
Freese and Nichols, Inc. Attn: Chris Bosco		
801 Cherry Street, Suite 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: _____

By:  _____

Name: _____

Name: Chris Bosco, P.E.

Title: _____

Title: Vice President/Principal

Date: _____

Date: 3/15/2023

APPROVED AS TO FORM:

By: _____

City Attorney, Assistant City Attorney,
or Deputy City Attorney

ATTACHMENT A
SCOPE OF SERVICES

PROJECT DESCRIPTION

Freese and Nichols, Inc., (hereinafter referred to as FNI) will render professional engineering services in conjunction with the Alsbury Boulevard – Phase 3 (from Prairie Grove Lane to CR 914) project (approximately 1.75 miles) for the City of Burleson (hereinafter referred to as CITY or OWNER).

The purpose of this project is to provide design, bid, and construction phase services to remove an existing two-lane undivided asphalt roadway and construct a four-lane divided concrete roadway with shared use paths on both sides of the roadway, underground drainage system, JCSUD water line, and signage and pavement marking improvements. The improvements will be constructed within a 120' wide right-of-way that will be acquired with this project. After a preferred alignment is identified by the CITY, an amendment to this contract is expected as described in the Additional Services section of this contract. With the construction funding for this project unknown, FNI will utilize the current TxDOT design criteria to prepare recommendations.

FNI will perform the following engineering, technical, and design services as authorized by the CITY.

WORK TO BE PERFORMED

<u>DESIGN SERVICES</u>	<u>EFFORT PER TASK</u>
TASK 1. PROJECT MANAGEMENT	\$48,000.48
TASK 2. TOPOGRAPHIC SURVEY	\$104,429.21
TASK 3. SUBSURFACE UTILITY ENGINEERING	\$83,996.44
TASK 4. GEOTECHNICAL ENGINEERING	\$39,822.15
TASK 5. ENVIRONMENTAL PERMIT EVALUATION	\$19,040.28
TASK 6. FRANCHISE UTILITY COORDINATION	\$20,552.50
TASK 7. CULVERT OUTFALL ALTERNATIVES	\$30,679.21
TASK 8. DESIGN REPORT	\$281,629.73
DESIGN SERVICES TOTAL	\$628,150.00

BASIC SERVICES

TASK 1. PROJECT MANAGEMENT

FNI will manage the work outlined in this scope to foster an efficient and effective use of FNI's and CITY's time and resources. FNI will manage change, communicate effectively, coordinate internally and externally as needed, and proactively address issues with the CITY's Project Manager and others as necessary to make progress on the work.

Communications and Reporting

- Set up project on internal system and prepare subconsultant contracts.
- Conduct internal project kickoff meeting.
- Conduct and document external project kickoff meeting with CITY.
- Conduct and document project update meetings (up to four (4)) with CITY Project Manager.
- Conduct internal project coordination meetings (up to four (4)).
- Prepare and submit monthly progress reports.
- Conduct up to three (3) site visits to understand the existing conditions.

ASSUMPTIONS

- One (1) project kickoff meeting with CITY
- Up to four (4) project update meetings with CITY
- Invoices will be provided to the CITY from FNI on a monthly basis.
- An amendment to this task is expected to increase the project management effort based on the project schedule after a preferred alignment and funding source is identified by the CITY.

DELIVERABLES

- A. Meeting summaries with action items
- B. Monthly progress reports
- C. Monthly invoices (up to 10)

TASK 2. TOPOGRAPHIC SURVEY

FNI will provide topographic survey support as follows:

- Temporary Right of Entry Letters - Prior to entering property for field survey, FNI will prepare, mail, and obtain permission for temporary right of entry from landowners after a date range for field survey has been provided by FNI. If the property owners are unresponsive to the temporary right of entry letters, the CITY will support FNI in contacting the property owners.
- Survey and prepare a topographic survey map that will establish the control line, centerline, and references for control points, benchmarks, and cross-sections. The survey will also include utility features found in the field marked by Texas 811 and will show public utility lines per as-built drawings provided by the CITY. The survey will be provided with an electronic copy for use in design. The survey will include location and identification of all above ground features within the survey limits including buildings, fences, utilities, drainage structures, sidewalk, driveways,

handicap ramps, guardrails, signs, etc. The outside limits of dense tree and vegetation growth will be identified. Trees six inches and larger in diameter will be surveyed and common name will be identified.

- Research the existing right-of-way / easement property boundaries and field locating within the project area.
- The topographic survey will be conducted up to 200 feet in width along the roadway alignment (approximately 11,300 feet in length).
- Survey Control and Materials:
 - 5/8" iron rods with cap and/or mag nails will be used as control material.
 - Horizontal and vertical control points will be set at 500' intervals within the project area. Where possible, control monumentation will be located sufficiently away from the project limits so as not be disturbed by construction activities.
 - All established main horizontal and vertical control along the pertinent calculations will be furnished in electric (MS Word Document) format.
- Prepare up to ten (10) easement survey documents (exhibit and metes and bounds description).
- Prepare up to five (5) right-of-way survey documents (exhibit and metes and bounds description) and set monuments for the new right-of-way acquisitions to meet the standards of the Texas Board of Professional Engineers and Land Surveyors (TBPELS).

ASSUMPTIONS

- Construction staking will be conducted by the Project Contractor, not by FNI.
- CITY will provide all services associated with meetings with property owners and acquisition of the easements.
- The number of easement and right-of-way survey documents in this contract is a contingency for property owners who may choose to move forward with property acquisition during this contract. An amendment to this task is expected to increase the number of easement and right-of-way survey documents after a preferred alignment is identified by the CITY.

DELIVERABLES

- A. Digital topographic survey file in CAD format, ASCII point file, and field notes and sketches.

TASK 3. SUBSURFACE UTILITY ENGINEERING

FNI will perform the Level A-D Subsurface Utility Engineering (SUE) work required for this project in general accordance with the recommended practices and procedures described in ASCE Publication CI/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data). As described in the mentioned ASCE publication, four levels have been established to describe the quality of utility location and attribute information used on plans. The four quality levels are as follows:

- Quality Level D (QL"D") – Information derived from existing utility records.
- Quality Level C (QL"C") - QL"D" information supplemented with information obtained by surveying visible above-ground utility features such as valves, hydrants, meters, manhole covers, etc.
- Quality Level B (QL"B") – Two-dimensional (x,y) information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as "designating",

this quality level provides the horizontal position of subsurface utilities within approximately one foot.

- Quality Level A (QL”A”) – Three-dimensional (x,y,z) utility information obtained utilizing non-destructive vacuum excavation equipment to expose utilities at critical points which are then tied down by surveying. Also known as “locating”, this quality level provides precise horizontal and vertical positioning of utilities within approximately 0.05 feet.

Utilities to be designated include gas, telecommunications, electric, traffic signals, storm, water and sanitary sewer.

FNI will designate the known subsurface utilities within the project limits utilizing geophysical equipment (electromagnetic induction, magnetic) to designate metallic/conductive utilities (e.g., steel pipe, electrical cable, telephone cable).

Quality Level B-D SUE will be conducted up to 200 feet in width along the roadway alignment (approximately 11,300 feet in length).

FNI will provide appropriate traffic control measures (barricades and signs).

FNI will utilize non-destructive vacuum excavation equipment to excavate test holes at the required locations. Due to the risk of damage, FNI will not attempt to probe or excavate test holes on any AC water lines unless approval is obtained from the CITY in advance. FNI will record the utility type, size, material, depth to top, and general direction. Each test hole will be assigned a unique ID number and will be marked with a nail/disk. The test-hole ID number and other pertinent utility information will be painted at each test-hole location.

FNI will provide up to ten (10) test holes (estimated to be between 8 and 12 feet in depth) Subsurface Utility Engineering (SUE) to Quality Level A, as described below:

- Expose and locate utilities at specific locations.
- Tie horizontal and vertical location of utility to survey control.
- Provide utility size and configuration.

FNI will provide a utility file, in AutoCAD format, depicting the type and horizontal location of the designated utilities and a summary sheet of the test hole coordinate data and depth information. The size of each utility will be presented in the utility file. If this information is indicated on available record drawings, FNI will also provide.

ASSUMPTIONS

- An amendment to this task is not expected to increase the area or quantity of the Quality Level B-D after a preferred alignment is identified by the CITY.
- An amendment to this task is expected to increase the number of testholes (Quality Level A) after a preferred alignment is identified by the CITY.

DELIVERABLES

- A. Digital subsurface utility engineering file in CAD format, ASCII point file, and field notes and sketches.

TASK 4. GEOTECHNICAL ENGINEERING

FNI will provide geotechnical engineering support for the design of concrete pavement (permanent), asphalt pavement (temporary), foundation support recommendations for two (2) culverts and retaining walls (up to 10 feet in height). It should be noted that the geologic atlas of Texas indicates that the Grayson formation

occurs in the northern half of the project limits and the Woodbine formation occurs in the southern half of the project limits. This is mentioned since the pavement subgrade could be different between these two formations and may require different approaches to pavement subgrade treatment. The following geotechnical engineering work will be completed:

- Field Exploration
 - Select and mark up to eight (8) boring locations and notify Texas 811 and CITY departments to request location and marking of existing underground utilities prior to the field exploration.
 - Due to limited ROW outside the roadway, the borings will be drilled through the existing pavement. Traffic control will be set up to close one lane of traffic and route vehicles around the drilling zone. We are anticipating flagmen will be needed to direct the traffic. If areas of ROW are available and clear of existing utilities, the boring will be drilled off the pavement.
 - Subcontract with a geotechnical drilling contractor to drill up to eight (8) borings to a depth of 20 feet. Samples will be collected intermittently using continuous flight augers and either split-spoon or tube samplers. Rock and rock-like materials will be tested insitu using a TxDOT Cone Penetration Test, as appropriate for the material. At completion, the boreholes will be backfilled with auger cuttings and the pavement patched (borings drilled through pavement).
 - Provide an Engineer or Geologist experienced in logging borings to direct the drilling, log the borings, and handle and transport the samples. Visual classification of the subsurface stratigraphy shall be provided per the Unified Soil Classification System (USCS).
- Laboratory Testing
 - Testing shall be performed on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials. FNI will select samples for laboratory testing, assign tests, and review the test results. Testing will be performed by a geotechnical testing subcontractor.
 - Laboratory tests will be assigned based on the specific subsurface materials encountered during exploration. Test type and quantity may vary, but are expected to include:
 - a. Classification tests (liquid and plastic limits and percent passing the no. 200 sieve or gradation)
 - b. Moisture content
 - c. Dry unit weight
 - d. Unconfined compressive strength
 - e. One-dimensional swell (restrained)
 - f. pH lime determination
 - g. Soluble sulfate content
- Engineering Analysis
 - Prepare a geotechnical report of the investigation to include:
 - a. Appendix with the boring locations, boring logs, laboratory test results, and a key to the symbols used.
 - b. Discussion of subsurface conditions and soil properties indicated by the field and laboratory work, and the implications for design.

- c. Foundation support recommendations for two (2) culverts and the retaining wall.
- d. Lateral earth pressures will be provided for design of the retaining wall and culvert walls.
- e. A global stability calculation will be made for the retaining wall for the maximum height, if needed. Depending upon depth to rock and depth of wall, it may be determined that the proposed wall foundation support is not susceptible to a slope failure. This will be evaluated for the specific site conditions and wall location. If slope calculations are needed, soil shear strength will be estimated using the soil classification test results and published correlations.
- f. Pavement thickness calculations and subgrade treatment recommendations will be provided.
- g. General discussion of expected construction-related issues.
- h. Earthwork-related recommendations for use during development of the plans and specifications.

ASSUMPTIONS

- An amendment to this task is not expected after a preferred alignment is identified by the CITY.

DELIVERABLES

- A. Geotechnical Report

TASK 5. ENVIRONMENTAL PERMIT EVALUATION

FNI will evaluate the project area for regulatory permitting requirements primarily related to Section 404 of the Clean Water Act (Section 404) and other know permits. This information will be utilized to evaluate the project improvements to minimize regulatory requirements for the project.

- Desktop Evaluation
 - Prior to the site visit, FNI's environmental scientists will assemble and review data such as aerial photographs, topographic maps, National Wetlands Inventory (NWI) maps, and soil data.
- Pedestrian Survey
 - FNI's environmental scientist will conduct a pedestrian survey within the project limits (including approximately 100 feet upstream and downstream of the existing culvert crossings) to document existing environmental conditions and assess potential environmental impacts. The presence and locations of waterbodies, including wetlands, potential federally listed threatened and endangered species habitat, and vegetation cover types will be identified within the project area.
- THC Coordination
 - FNI's environmental scientist will prepare and submit a consultation letter to the Texas Historical Commission (THC) to determine the potential for the project to impact protected cultural resources and provide results to the CITY. If follow up studies are requested by the THC, those studies can be provided as an additional service with written authorization from the CITY.
- Conceptual Environmental Permitting Memorandum

- Information gathered during the pedestrian survey (and coordination with the project team and CITY) will be used to prepare a technical memorandum identifying potential environmental permitting requirements for the proposed improvements identified in the conceptual design phase.

ASSUMPTIONS

- Section 404 - Section 404 of the Clean Water Act (Section 404) regulates the discharge of materials within waters of the U.S. (such as streams, ponds, and wetlands), and the U.S. Army Corps of Engineers must issue a Section 404 permit prior to a regulated action. This scope assumes if waters of the U.S. are impacted by the proposed project, then the proposed project could be authorized by a Section 404 Nationwide Permit (NWP), such as NWP 14 - Linear Transportation Projects.
- TxDOT NEPA - The National Environmental Policy Act (NEPA) requires federal agencies to assess the environmental impacts from their proposed actions or projects. TxDOT has environmental compliance policies to comply with Federal Highway Administration (FHWA) NEPA compliance procedures. This scope assumes the scoping of TxDOT environmental documentation requirements will take place during future phases of design.
- An amendment to this task is expected after a preferred alignment and funding source is identified by the CITY.

DELIVERABLES

A. Conceptual Environmental Permitting Memorandum

TASK 6. FRANCHISE UTILITY COORDINATION

FNI will provide franchise utility coordination support for the CITY, as follows:

- FNI will develop a Franchise Utility Contact List of companies within and adjacent to the project.
- FNI will prepare and conduct up to three (3) franchise utility coordination meetings with utility owners.
- FNI will develop the design of CITY facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs. Where conflicts cannot be avoided, coordination of utility conflicts will be completed by FNI with assistance from the CITY.
- In the case of a private utility conflict, the FNI will provide a PDF set of plans with the utility conflicts highlighted and a utility conflicts table of those conflicts. If necessary, FNI will coordinate directly with the private utility provider if that provider needs to undertake design to adjust their utility's location.
- FNI shall create a Schematic Franchise Utility Conflict Exhibit using the proposed improvements and the existing utility file created by the Subsurface Utility Engineering task.
- FNI will create a Schematic Franchise Utility Conflict Matrix to supplement the Schematic Franchise Utility Conflict Exhibit.
- As available, the CITY will attend the coordination meetings and assist in the coordination process.

TASK 7. CULVERT OUTFALL ALTERNATIVES

FNI will provide hydraulic analysis and culvert outfall alternatives analysis for the CITY, as follows:

- FNI will delineate a drainage area for each of the two (2) culvert crossing locations. FNI will utilize the appropriate hydrologic method outlined in the CITY's drainage criteria to determine discharge rates for the post-project runoff conditions for each drainage area.

- FNI will identify a new/proposed culvert size for each of the two (2) culvert crossings based on the post-project conditions.
- FNI will review the existing condition topographic data (collected with this project) and the future roadway conditions at the two (2) culvert crossings as part of the alternatives analysis.
- FNI will provide up to three (3) culvert outfall alternatives for each culvert crossing (up to two (2) for a total of up to six (6) outfall alternatives. Each of the six (6) outfall alternatives will include an existing and an estimated construction cost.
- FNI will prepare a brief technical report summarizing the six (6) drainage outfall alternatives analysis and the provided alternatives.
- FNI will prepare for and conduct a meeting with the CITY to review and select a preferred culvert outfall for each culvert crossing.

ASSUMPTIONS

- It is assumed that no HEC-RAS hydraulic modeling will be conducted for this effort.
- It is assumed that no there will be no hydraulic adverse impacts; therefore, adverse impact or flood mitigation alternatives will not be provided.
- An amendment to this task is not expected after a preferred alignment is identified by the CITY.

DELIVERABLES

- A. Technical Memorandum
- B. Exhibits and Estimated Construction Costs for Up to Six (6) Culvert Outfall Alternatives

TASK 8. DESIGN REPORT

The purpose of the design report is for FNI to prepare, identify, and develop a design that meets the CITY’s goals for the project. The design report will be provided to the CITY to obtain an endorsement for the concept to process with Conceptual, Preliminary, and Final Design.

FNI will provide design report analysis and culvert outfall alternatives analysis for the CITY, as follows:

Collect Existing Traffic Data

- FNI will collect 24-hour bi-directional volume and intersection turning movement intersection counts (at intersection of CR 914 and CR 1020) with basic classification (lights/mediums/articulated trucks).

Design Criteria Summary

- FNI will prepare a summary (in table format) of the TxDOT design criteria that will be followed by the project.

Access Management

- FNI will provide recommendations for access management from the proposed roadway to the existing properties. These recommendations will be applicable to all alignment alternatives and may include shared access, median openings, and two-way left turn lanes.

Utility Evaluation

- FNI will evaluate the feasibility to extend CITY sanitary sewer services within the project area.

Alignment Alternatives

- FNI will provide up to three (3) alignment alternatives which meet the project scope and design criteria. It is assumed that each of these alignment alternatives will not deviate more than 40 feet from the existing centerline.
- FNI will prepare a roadway profile for one (1) alignment alternative. This roadway profile will be used to understand the necessary easements, retaining wall limits, and necessary earthwork. It is assumed that the roadway profile will not change between each alternative.
- FNI will prepare roadway typical sections (including proposed location of CITY and franchise utilities).
- FNI will provide up to three (3) roundabout intersection designs within the project area.
- FNI will evaluate the necessary area of right-of-way (ROW) or easement acquisitions within the project area for each of the three (3) alignment alternatives.
- FNI will estimate the property acquisition costs for each of the three (3) alignment alternatives.
- FNI will develop estimated construction costs for each of the three (3) alignment alternatives. Sources of data used in the preparation of the estimated construction costs include, but are not limited to, construction data aggregation services, similar past projects performed by FNI, bid results from previous CITY projects of similar type, and professional experience and engineering judgment.
- FNI will provide an alignment alternative evaluation matrix for the three (3) alignment alternatives. This matrix will be used to compare the alternatives and will include the following information:
 - Number of parcels impacted with ROW acquisition.
 - Number of relocations based on structure removals.
 - Estimated ROW costs.
 - Impact to environmentally sensitive areas.
 - Estimate construction costs.
 - Difficulty of construction phasing
 - Cost and difficulty of franchise utility relocation
- FNI will prepare a brief technical memorandum summarizing the three (3) alignment alternatives that were prepared for the CITY.
- FNI will prepare for and conduct a meeting with the CITY to review and select a preferred alignment alternative.

Plan and Profile Exhibit

- After the CITY selects a preferred alignment alternative, FNI will prepare one (1) plan and profile exhibit of the project improvements based on the CITY preferred alignment. The plan and profile exhibit will include the following information:
 - Location map, project name, and project limits.
 - Existing conditions data (including aerial, topographic and boundary survey, and SUE).

- Proposed alignment and alignment data.
- Existing and proposed typical sections.
- Proposed roadway and driveway layout (including CITY preferred access management method).
- Proposed roadway profile.
- Existing and proposed right-of-way and easement layout (including parcel summary table).
- Proposed culvert layout.
- FNI to update the estimated construction costs and based on the Plan and Profile Exhibit and feedback received during the meeting with the CITY to select the preferred alignment alternative.

ASSUMPTIONS

- FNI will begin to prepare the alignment alternatives after the topographic and boundary survey data has been collected from the field.
- FNI will not conduct a traffic analysis or future growth projections.
- An amendment to this task is not expected after a preferred alignment and funding source is identified by the CITY.

DELIVERABLES

- A. Existing Traffic Counts.
- B. Plan View Exhibits of Three (3) Alignment Alternatives.
- C. Estimated Construction Cost for Each Alignment Alternative.
- D. Estimated Property Acquisition Cost for Each Alignment Alternative.
- E. Technical Memorandum.
- F. Plan and Profile Exhibit

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

- A. Land acquisition services
- B. Construction materials testing.
- C. Field layouts or the furnishing of construction line and grade surveys (to be provided by the Contractor).
- D. Water and sanitary sewer design other than adjustment of surface appurtenances.
- E. Design of pedestrian bridge.
- F. Providing renderings, model, and mock-ups requested by the CITY.
- G. Assisting CITY in claims disputes with Contractor(s).
- H. Assisting CITY in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, will be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- I. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- J. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- K. Services required to resolve bid protests or to rebid the projects for any reason.
- L. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.
- M. GIS mapping services or assistance with these services.
- N. Site visits and meetings in excess of the number of trips included in the scope of services.
- O. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the CITY.
- P. Quality Level "A, B, C, D" subsurface utility engineering outside of the quantity outlined in the scope of services.
- Q. Public Involvement and Public Meeting Facility Rental.
- R. Floodplain Services (CLOMR and/or LOMR).
- S. After a preferred alignment and project funding is identified by the CITY, an amendment to this contract is expected to include the following:
 - 1. Project Management
 - 2. Survey Documents (ROW and Easements)
 - 3. Conceptual Design (30%)
 - 4. Preliminary Design (60%)
 - 5. Final Design (90% and 100%)

6. Bid and Construction Phase
7. Franchise Utility Coordination
8. Public Involvement
9. TDLR / TAS Plan Review and Inspection
10. Environmental Documentation
11. Property Acquisition Support
12. Subsurface Utility Engineering – Additional Level A
13. Funding Application Support

PROJECT SCHEDULE

FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the attached project schedule (Attachment B).

If FNI's services are delayed through no fault of FNI, FNI will 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 OWNER 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.

RESPONSIBILITIES OF OWNER: OWNER will perform the following in a timely manner so as not to delay the services of FNI:

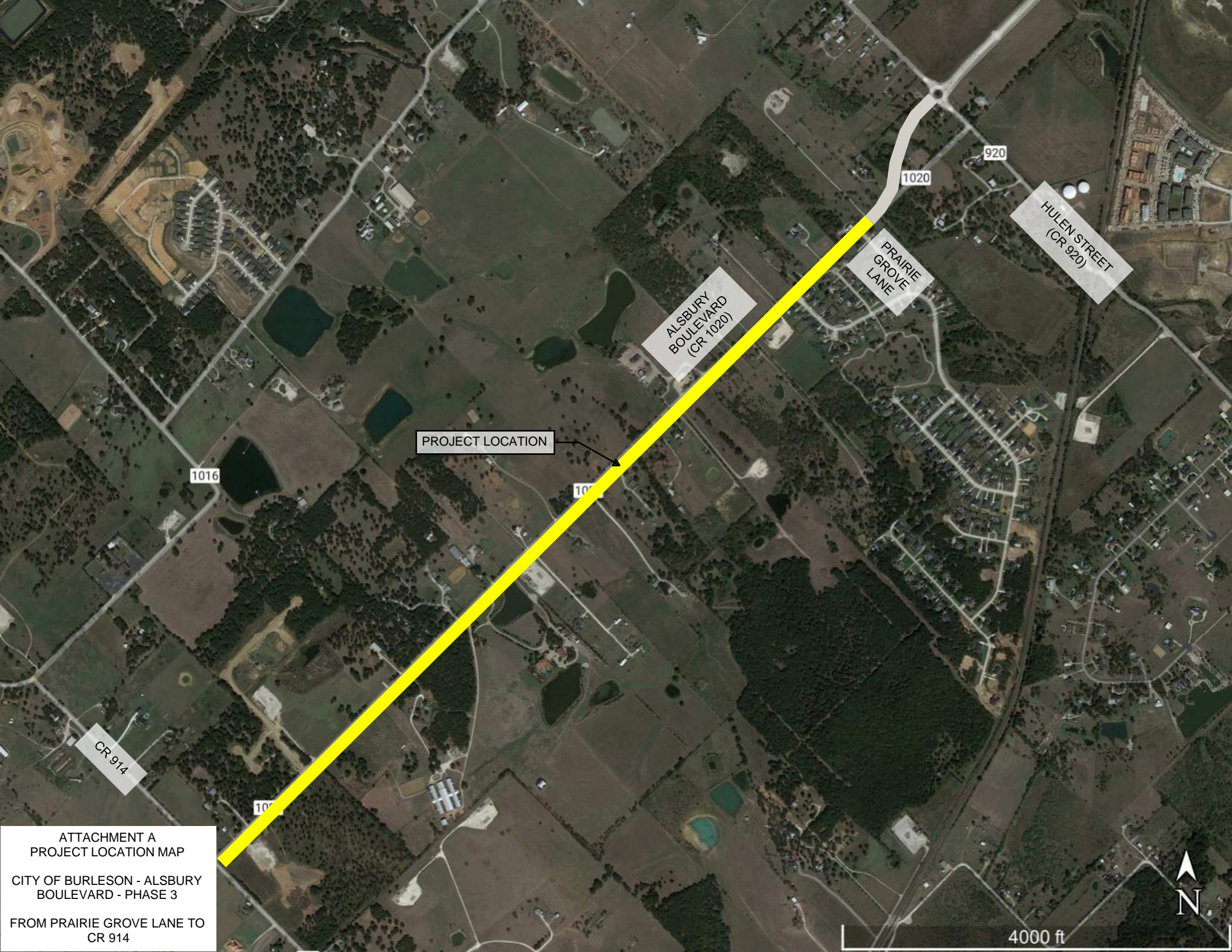
- A. Designate in writing a person to act as City's representative with respect to the services to be rendered under this Agreement. Such person will have contract authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to City's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which City will require to be included in the drawings and specifications.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data (design plans, drainage studies, surveys, property information, utility locations, CADD files) relative to design or construction of the Project.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as City deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- F. The CITY will attend review meetings and make final decisions on design issues such that questionable matters may be resolved and the project progress as scheduled.
- 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. Furnish, or direct FNI to provide, Additional Services.
- I. Bear all costs incident to compliance with the requirements of the Responsibilities of Owner section.

DESIGNATED REPRESENTATIVES: FNI and OWNER designate the following representatives:

Owner's Designated Representative – Tiana Jackson, P.E., CFM, Project Manager – Public Works Department, 141 W. Renfro, Burleson, Texas 76028; Phone (817) 426-9619; e-mail: tjackson@burlesontx.com

FNI's Project Manager – Todd Buckingham, P.E., 801 Cherry St Suite 2800, Fort Worth, Texas 76102; Phone (817) 735-7517; Fax (817) 735-7491; e-mail: todd.buckingham@freese.com

FNI's Accounting Representative – Erin Westbrook, 801 Cherry St Suite 2800, Fort Worth, Texas 76102; Phone (817) 735-7395; Fax (817) 735-7491; email: erin.westbrook@freese.com



PROJECT LOCATION

ALSBURY
BOULEVARD
(CR 1020)

PRAIRIE
GROVE
LANE

HULEN STREET
(CR 920)

1016

1020

1020

920

CR 914

1016

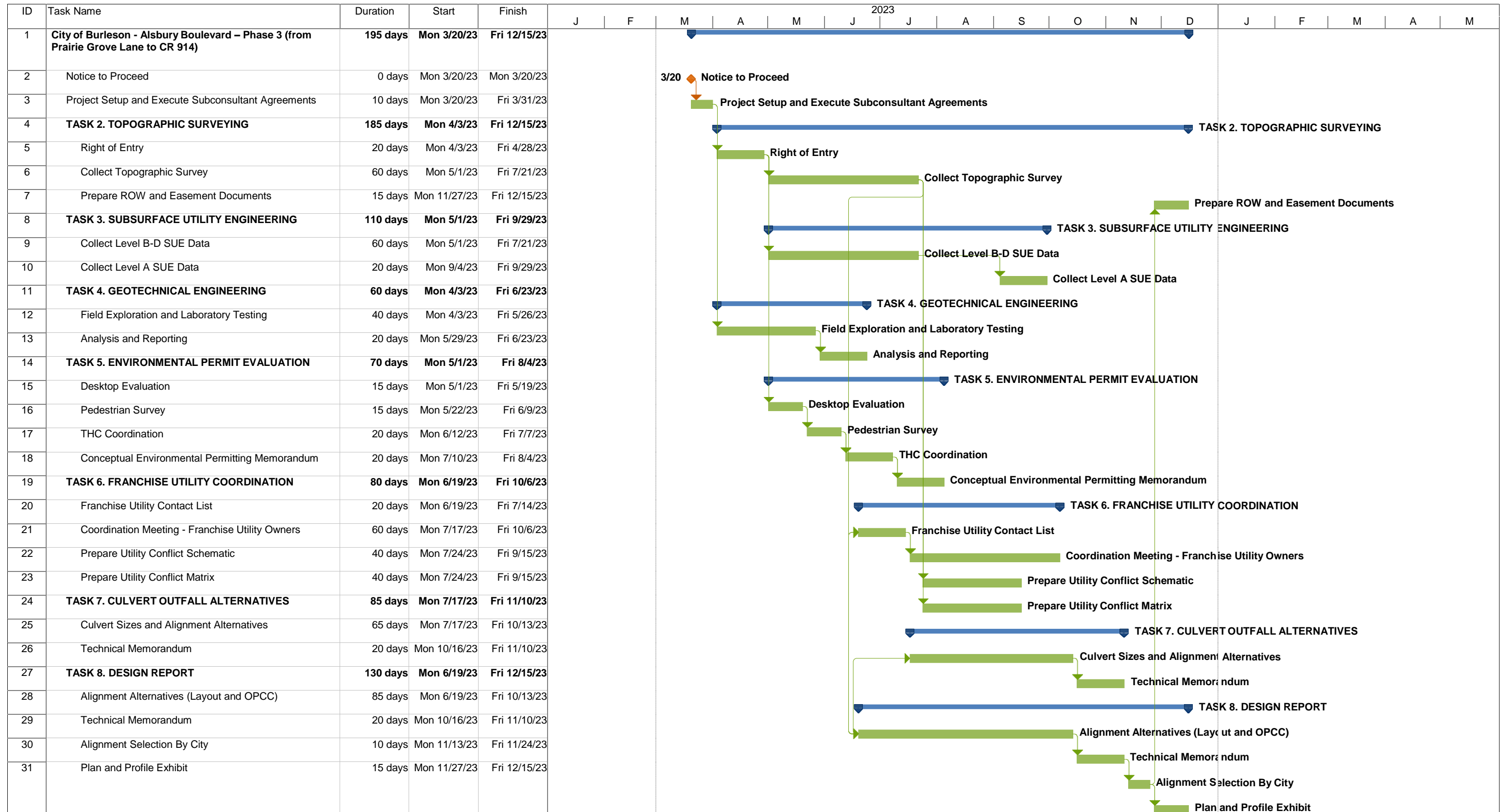
ATTACHMENT A
PROJECT LOCATION MAP

CITY OF BURLESON - ALSBURY
BOULEVARD - PHASE 3

FROM PRAIRIE GROVE LANE TO
CR 914

4000 ft





Attachment B
Print Date: Wed 3/1/23

Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Progress	
Split		External Tasks		Inactive Summary		Manual Summary		Deadline	
Milestone		External Milestone		Manual Task		Start-only			
Summary		Inactive Task		Duration-only		Finish-only			