

FIRST AMENDMENT TO PROFESSIONAL SERVICES CONTRACT

THIS FIRST AMENDMENT TO PROFESSIONAL SERVICES CONTRACT, entered into this ___ day of _____, 2022 (hereinafter, the "Effective Date"), by and between the City of Manor, Texas, a home rule municipal corporation (hereinafter, the "City") and Freese and Nichols, Inc., a Texas corporation (hereinafter, the "Consultant"). The City and the Consultant may at times be referred to as the "Parties."

RECITALS

WHEREAS, the City and the Consultant entered into that certain professional services contract dated the 17th day of February, 2021 (hereinafter, the "Contract"); and

WHEREAS, the Consultant has been unable to meet the 15-month schedule outlined in the Contract; and

WHEREAS, the Consultant has agreed to return \$135,000 of the \$288,258 lump sum payment under the Contract; and

WHEREAS, the Consultant has proposed an **Engagement and Delivery Schedule** (Attached hereto as **Exhibit A** and incorporated by reference herein) to create benchmarks to be achieved and trigger payment of the \$135,000; and

WHEREAS, the City and the Consultant now wish to amend the Contract to accomplish the above.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree to the following:

1. **Refund.** The Consultant shall pay to the City the amount of \$135,000 of the fee paid to the Consultant under the Contract under the schedule provided herein (hereinafter, the "Remaining Contract Amount").
2. **Compensation for tasks completed.** The Remaining Contract Amount will be paid back to the Consultant upon the timely performance of deliverables as described in the **Scope of Services and Compensation Table** attached hereto as **Exhibit B** and incorporated by reference herein. Compensation will be paid only upon review and acceptance of the tasks by the City.
3. **Time of completion.** The prompt completion of the deliverables under the Scope of Services and Compensation Table is critical to the City. Suspension or abandonment in providing the deliverables under the Scope of Services and Compensation Table shall be grounds for dismissal of the Consultant and termination of the Contract without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Consultant prior to the time of termination.
4. **Weekly reports.** Consultant is required to provide weekly reports detailing the activities of the Consultant and progress towards achieving the deliverables on **Exhibit B**. Failure to provide weekly reports shall be considered a suspension of tasks and shall be

grounds for dismissal of the Consultant and termination of the Contract without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Consultant prior to the time of termination.

5. **Entire Agreement.** This Amendment, together with the Contract, set forth the entire understanding of the parties and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.
6. **Effect of the Amendment.** The Parties agree that, except as modified hereby, the Contract remains valid, binding, and in full force and effect. If there is any conflict or inconsistency between this Amendment and the Contract, this Amendment will control and modify the Contract.
7. **Counterparts.** This Amendment may be executed in any number of counterparts, including, without limitation, facsimile counterparts, with the same effect as if the parties had signed the same document, and all counterparts will constitute one and the same agreement.
8. **Statutory Verifications.**
 - a. To the extent this Amendment constitutes a contract for goods or services within the meaning of Section 2271.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, the Consultant represents that neither the Consultant nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant (i) boycotts Israel or (ii) will boycott Israel through the term of this Amendment. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.
 - b. To the extent the Amendment constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Governmental Code, as amended, solely for the purposes of compliance with Chapter 2252 of the Texas Governmental Code, and except to the extent otherwise required by applicable federal law, Consultant represents that the Consultant nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant is a company listed by the Texas Comptroller Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.
 - c. The Consultant hereby verifies that it and its parent's company, wholly or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of the Amendment. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such section is not inconsistent with a governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing or investment of funds. As used in the foregoing verification, "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil-based energy and does not commit or pledge to meet environmental standards

beyond federal and state law: or (B) does business with a company described as by the preceding statement in (A).

- d. The Consultant hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Amendment. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

[SIGNATURE PAGES FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the Effective Date.

CITY OF MANOR
A Texas municipal corporation

By: _____
Christopher Harvey, Mayor

Attest:

By: _____
Lluvia T. Almaraz, City Secretary

FREESE AND NICHOLS, INC.
A Texas corporation

By: _____
Name: JOHN DEWAR
Title: VICE PRESIDENT

EXHIBIT A
ENGAGEMENT AND DELIVERY SCHEDULE
(SEE ATTACHED)

Advance Billing

We are aware of a concern surrounding this project being billed in full. Full invoicing was provided at the request of city staff, received by email on August 26, 2021, and was questioned by us prior to processing to ensure this was correct. This is not something we typically do, and received questions internally as well. We have treated the payment similar to an escrow. If there is a need to shift this back proportionally based on level of completion, such as an audit concern or simply to restore confidence, we can likely find a way to do that through our accounting processes. We can also tie invoicing to deliverables, hold billing until a full draft is provided, and similar techniques. We want invoicing and payment to be the least of your worries.

Time of Performance

We recognize we have not met expectations regarding the original 15-month schedule. Recommendations for how to bring the project to completion in a manner Manor will be proud of are outlined below in **Engagement/Meetings** and **Proposed Deliverable Schedule**.

- FNI has experienced significant staffing transitions within the Urban Planning+Design Group, including a transition of assistant project manager for the Manor Comprehensive Plan. This resulted in workload of other projects shifting and impacting this project team. The Manor project manager transitioned positions with additional duties assigned while still maintaining project responsibilities. The group is fully-staffed again as of 7/5/22.
- A missed CPAC quorum in August 2021 resulting in project delays.
- The disappointing response to the first survey caused a pause as we sought additional input; we wanted additional data from a second survey and stakeholders before proceeding too far with topical elements. This was mentioned in discussions with both the CPAC and City Council.
- The team paused again and reset some information following the Samsung announcement, recognizing it had broad implications for Manor's economic opportunities as well as housing market. This was mentioned at the 5/4/22 City Council briefing.
- COVID has presented significant challenges, more so than we've seen in other communities, regarding engagement. In addition, COVID directly affected our team multiple times, resulting in lost time. In addition, a project team member went on FMLA-eligible leave.
- Criticality to consider new staff leadership needs and observations with hiring of new City Manager and Economic Development Director.

We acknowledge that all of the above should have been communicated more clearly. We have since added a new assistant project manager that is in the same office as the project manager. We have also setup biweekly calls to better communicate.

Engagement/Meetings

The table below reflects a summary of the various engagements FNI has undertaken with Manor’s Comprehensive Plan. Detailed summaries are provided separately. A key issue to understand is that engagement is reliant upon local effort—we do not have established relationships with key people that get the word out. In other words, the message is different when received by a Mayor or City Manager, or even a trusted community member like a pastor, versus an outside consultant.

Engagement Topic Area	Status/Actions Taken	Recommended Engagement Going Forward
Staff initiation and conference call	Completed	We have now setup biweekly check-ins with Scott Dunlop.
Kick-off meeting and study area tour	Completed; parks-specific follow-up on 7/11	-
<p>CPAC Meetings Six total, with three being virtual</p>	<p>City assigned P&Z as CPAC; two meetings completed in-person; one missed quorum in which FNI made the trip; one missed quorum in which FNI prepped but was notified prior to travel; virtual lost as an option due to change in state law regarding open meetings</p> <p>8/25/23 - CPAC for Land Use, Economic Development, Snapshot and Vision; overview of Transportation and Mobility; overview of Parks, Recreation and Open Space (needs assessment)</p>	<p>Conduct all CPAC meetings in-person and add an additional meeting (exceed scope); Create enticement to attend (serve food, etc.); Consider adjusting to use City Council or a subcommittee of both City Council and P&Z to complete; Do not double-book on same night as regular meetings; Set schedule for three remaining meetings between the date of execution of this amendment and November 1, 2022, to cover the following:</p> <ul style="list-style-type: none"> Parks, Recreation, Open Space Transportation and Mobility Infrastructure and Facilities Downtown and Urban Design Implementation and Action Plan

Engagement Topic Area	Status/Actions Taken	Recommended Engagement Going Forward
Virtual Stakeholder Meetings	Conducted as a hybrid in-person and virtual on 2/4 and 2/7 (two separate days; exceeds requirements of scope); Conducted a stakeholder group at Manor Senior High School 4/12 as separate trip.	Invite follow-up review on drafts once posted
	<p>Conducted 1-on-1s due to limited attendance at stakeholder meetings and need to reach underrepresented groups that didn't appear as heavily in survey results.</p> <p>Conducted 1-on-1s with select businesses to gain better perspective. Still pulling notes. Currently handwritten notes/need to type.</p>	Use these contacts as outreach conduits for future engagement and community events; most of these represent a network of some type, or are trusted individuals within underrepresented groups.
Online Surveying (at least 3 <u>non-scientific</u> , with one including substantial focus on parks & rec)	<p>First survey: 6/17/21-7/16/21; observed representation issues; created 2nd survey in different host format, fully translated, provided flyers and social media info for distribution by city.</p> <p>Second survey: 10/25/21-1/31/22; canvassed business parking lots including Walmart (exceeds scope), conducted survey station at Starbucks for an afternoon (exceeds scope), requested direct support for distribution from Manor ISD</p>	<p>Plan for a third survey based on reacting to goals for each chapter, possibly policy statements as well; Include opportunity to react-to or comment on future land use map and thoroughfare plan map, parks/trails map; Coordinate with events below so these serve as virtual alternatives</p> <p>Post full draft for comment during November.</p>

Engagement Topic Area	Status/Actions Taken	Recommended Engagement Going Forward
Community Events (2 in-person; 2 virtual)	<p>Manor Night at the Park 10/15/21</p> <p>Manorpalooza 5/7/22: Also spent time at Walmart and Starbucks to seek input on boards at those locations prior to Manorpalooza in the afternoon (exceeds scope)</p>	<p>September 6th - Community Open House</p> <p>Recommend Manor Night at the Park for booth opportunity, or at holiday event, to present the final plan</p>

Proposed Deliverable Schedule

The information below depicts a realistic deliverable schedule for the various chapters for review by city staff. This includes final deliverables, but also proposes an additional set of deliverables beyond the scope (but a portion of anticipated final deliverable content).

Interim Deliverables

Recognizing schedule issues, we recommend exceeding scope to provide four key interim deliverables, which would be transferable to the final drafts. These are viewed as responsive to timely issues in which it would benefit City Management and the staff to have adopted policy direction they can point to in regional conversations as well as in a highly dynamic development environment. We would like to better understand the timing of this need so we can schedule appropriately. These would include:

- Adoptable Vision and Guiding Principles
- Interim Future Land Use Map and Category Descriptions – ready pending confirmation from Scott Dunlop
- Interim Thoroughfare Master Plan Map – alignments identified; need to assign ROW widths for purposes of securing dedication during development process
- Interim Strategic Policy Recommendations
 - Key Land Use
 - Key Transportation
 - Regional Infrastructure and multi-purpose easements/alignments

Final Deliverables

Deliverable	Status	Needed from City	Actions by FNI	Timeline
Snapshot	Completed and posted	N/A	N/A	Delivered

Deliverable	Status	Needed from City	Actions by FNI	Timeline
Vision	Completed and posted	N/A	Updates as needed for additional engagement	Delivered
Land Use and Development	Completed and posted	N/A	N/A	Delivered
Transportation	Fully drafted; quality control review completed; addressing changes	Review upon receipt CPAC meeting	Draft section graphics included in draft; refine to final artistic graphics.	September 19th target to client

Deliverable	Status	Needed from City	Actions by FNI	Timeline
Infrastructure	Fully drafted and in quality control review	Review upon receipt CPAC meeting	Complete quality control for delivery; add images and graphics	September 19th target to client
Parks, Recreation and Open Space	Fully drafted and in quality control review, except for cost estimates	Review upon receipt, particularly recommendations. CPAC meeting	Development of cost estimates following City review of recommendations.	September 19th target to client
Economic Development	Completed and posted.	N/A	Add images and graphics	Delivered
Community Image and Urban Design	Awaiting transportation and parks chapters completion; Renderings prepared	Review upon receipt CPAC meeting	Draft chapter; develop and refine goals and actions; placement of downtown-related elements in this chapter	October 3rd target to client
Implementation	Awaiting completion of chapters in order to develop action plan matrix	Review upon receipt CPAC meeting	Integrate as chapters are completed	October 31st with delivery of comprehensive draft

EXHIBIT B
ENGAGEMENT AND DELIVERY SCHEDULE
(SEE ATTACHED)

EXHIBIT B
SCOPE OF SERVICES AND COMPENSATION SCHEDULE

** All listed deliverables are detailed in Exhibit A **

Deliverable	Scheduled Completion	% of Remaining Contract to be Repaid
Snapshot	07/31/2022	
Vision	07/31/2022	
CPAC Meeting – Land Use, Economic Development	08/08/2022	
Land Use and Development	08/16/2022	
Infrastructure	08/16/2022 – 08/31/2022	
CPAC Meeting – Parks, Recreation, Open Space	08/23/2022	
Transportation	08/31/2022	
Economic Development	08/16/2022 – 08/31/2022	
Parks, Recreation, and Open Spaces	09/01/2022 – 09/08/2022	
CPAC Meeting – Downtown, Urban Design, Infrastructure	09/13/2022	
Community Image and Urban Design	09/26/2022 – 09/30/2022	
CPAC Meeting – Final for complete plan and final engagement result	10/25/2022	
Implementation & Comprehensive Draft	10/31/2022	\$89,231.41
Final Comprehensive Plan incorporating all City Comments	11/30/2022	\$45,768.59