

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.  
FOR THE CUSTER ROAD 6.0 MG GROUND STORAGE TANK PROJECT (2412-WA)**

This Agreement for Professional Engineering Services, hereinafter called "Agreement," is entered into by the **Town of Prosper, Texas**, a municipal corporation, duly authorized to act by the Town Council of said Town, hereinafter called "Town," and **Freese and Nichols, Inc.**, a company authorized to do business in Texas, acting through a duly authorized officer, hereinafter called "Consultant," relative to Consultant providing professional engineering services to Town. Town and Consultant when mentioned collectively shall be referred to as the "Parties."

**WITNESSETH:**

**WHEREAS**, Town desires to obtain professional engineering services in connection with the **Custer Road 6.0 MG Ground Storage Tank Project (2412-WA)**, hereinafter called "Project";

For the mutual promises and benefits herein described, Town and Consultant agree as follows:

1. **Term of Agreement.** This Agreement shall become effective on the date of its execution by both Parties, and shall continue in effect thereafter until terminated as provided herein.

2. **Services to be Performed by Consultant.** The Parties agree that Consultant shall perform such services as are set forth and described in **Exhibit A - Scope of Services** and incorporated herein as if written word for word. All services provided by Consultant hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent members of their profession. In case of conflict in the language of Exhibit A and this Agreement, this Agreement shall govern and control. Deviations from the Scope of Services or other provisions of this Agreement may only be made by written agreement signed by all Parties to this Agreement.

3. **Prompt Performance by Consultant.** Consultant shall perform all duties and services and make all decisions called for hereunder promptly and without unreasonable delay as is necessary to cause Consultant's services hereunder to be timely and properly performed. Notwithstanding the foregoing, Consultant agrees to use diligent efforts to perform the services described herein and further defined in any specific task orders, in a manner consistent with these task orders; however, the Town understands and agrees that Consultant is retained to perform a professional service and such services must be bound, first and foremost, by the principles of sound professional judgment and reasonable diligence.

4. **Compensation of Consultant.** Town agrees to pay to Consultant for satisfactory completion of all services included in this Agreement a total fee of Five Hundred Ninety Nine Thousand Five Hundred Dollars (\$599,500) for the Project as set forth and described in **Exhibit B - Compensation Schedule** and incorporated herein as if written word for word. Lump sum fees shall be billed monthly based on the percentage of completion. Hourly not to exceed fees shall be billed monthly based on hours of work that have been completed. Direct Costs for expenses such as mileage, copies, scans, sub-consultants, and similar costs are included in fees and shall be billed as completed.

Consultant agrees to submit statements to Town for professional services no more than once per month. These statements will be based upon Consultant's actual services performed and reimbursable expenses incurred, if any, and Town shall endeavor to make prompt payments. Each statement submitted by Consultant to Town shall be reasonably itemized to show the amount of work performed during that period. If Town fails to pay Consultant

within sixty (60) calendar days of the receipt of Consultant's invoice, Consultant may, after giving ten (10) days written notice to Town, suspend professional services until paid.

Nothing contained in this Agreement shall require Town to pay for any work that is unsatisfactory as reasonably determined by Town or which is not submitted in compliance with the terms of this Agreement.

The Scope of Services shall be strictly limited. Town shall not be required to pay any amount in excess of the original proposed amount unless Town shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

5. **Town's Obligations.** Town agrees that it will (i) designate a specific person as Town's representative, (ii) provide Consultant with any previous studies, reports, data, budget constraints, special Town requirements, or other pertinent information known to Town, when necessitated by a project, (iii) when needed, assist Consultant in obtaining access to properties necessary for performance of Consultant's work for Town, (iv) make prompt payments in response to Consultant's statements and (v) respond in a timely fashion to requests from Consultant. Consultant is entitled to rely upon and use, without independent verification and without liability, all information and services provided by Town or Town's representatives.

6. **Ownership and Reuse of Documents.** Upon completion of Consultant's services and receipt of payment in full therefore, Consultant agrees to provide Town with copies of all materials and documents prepared or assembled by Consultant under this Agreement and that Town may use them without Consultant's permission for any purpose relating to the Project. Any reuse of the documents not relating to the Project shall be at Town's risk. Consultant may retain in its files copies of all reports, drawings, specifications and all other pertinent information for the work it performs for Town.

7. **Town Objection to Personnel.** If at any time after entering into this Agreement, Town has any reasonable objection to any of Engineer's personnel, or any personnel, professionals and/or consultants retained by Engineer, Engineer shall promptly propose substitutes to whom Town has no reasonable objection, and Engineer's compensation shall be equitably adjusted to reflect any difference in Engineer's costs occasioned by such substitution.

8. **Insurance.** Consultant shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement applicable insurance policies as described in **Exhibit C - Insurance Requirements** and incorporated herein as if written word for word. Consultant shall submit to Town proof of such insurance prior to commencing any work for Town.

9. **Indemnification.** **CONSULTANT DOES HEREBY COVENANT AND AGREE TO RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ITS OFFICIALS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES AND INVITEES FROM AND AGAINST LIABILITY, CLAIMS, SUITS, DEMANDS AND/OR CAUSES OF ACTION, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES AND COSTS OF LITIGATION), WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PROPERTY OR PERSONS BUT ONLY TO THE EXTENT OCCASIONED BY THE NEGLIGENT ACT, ERROR OR OMISSION OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT.**

**IN THE EVENT THAT TOWN AND CONSULTANT ARE CONCURRENTLY NEGLIGENT, THE PARTIES AGREE THAT ALL LIABILITY SHALL BE CALCULATED ON A COMPARATIVE BASIS OF FAULT AND RESPONSIBILITY AND THAT NEITHER PARTY SHALL BE REQUIRED TO DEFEND OR INDEMNIFY THE OTHER PARTY FOR THAT PARTY'S NEGLIGENT OR INTENTIONAL ACTS, ERRORS OR OMISSIONS.**

10. **Notices.** Any notices to be given hereunder by either Party to the other may be affected either by personal delivery, in writing, or by registered or certified mail to the following addresses:

Freese and Nichols, Inc.  
Clayton Barnard, P.E., Principal  
6136 Frisco Square Blvd, Suite 375  
Frisco, TX 75034  
[clayton.barnard@freese.com](mailto:clayton.barnard@freese.com)

Town of Prosper  
Mario Canizares, Town Manager  
PO Box 307  
Prosper, TX 75078  
[mcanizares@prospertx.gov](mailto:mcanizares@prospertx.gov)

11. **Termination.** The obligation to provide further services under this Agreement may be terminated by either Party in writing upon thirty (30) calendar days notice. In the event of termination by Town, Consultant shall be entitled to payment for services rendered through receipt of the termination notice.

12. **Sole Parties and Entire Agreement.** This Agreement shall not create any rights or benefits to anyone except Town and Consultant, and contains the entire agreement between the Parties. Oral modifications to this Agreement shall have no force or effect.

13. **Assignment and Delegation.** Neither Town nor Consultant may assign its rights or delegate its duties without the written consent of the other Party. This Agreement is binding on Town and Consultant to the extent permitted by law. Nothing herein is to be construed as creating any personal liability on the part of any Town officer, employee or agent.

14. **Texas Law to Apply; Successors; Construction.** This Agreement shall be construed under and in accordance with the laws of the State of Texas. It shall be binding upon, and inure to the benefit of, the Parties hereto and their representatives, successors and assigns. Should any provisions in this Agreement later be held invalid, illegal or unenforceable, they shall be deemed void, and this Agreement shall be construed as if such provision had never been contained herein.

15. **Conflict of Interest.** Consultant agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated in **Exhibit D - Conflict of Interest Affidavit** and incorporated herein as if written word for word, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit included in the exhibit. Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as **Exhibit E - Conflict of Interest Questionnaire** and incorporated herein as if written word for word.

16. **Venue.** The Parties herein agree that this Agreement shall be enforceable in Prosper, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Collin County, Texas.

17. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

18. **Prevailing Party.** In the event a Party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled

to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

19. **"Anti-Israel Boycott" Provision.** In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Chapter 2270 does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the company is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this Agreement on behalf of the company verifies by its signature to this Agreement that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.

20. **2IRAN, SUDAN AND FOREIGN TERRORIST ORGANIZATIONS.** If § 2252.153 of the Texas Government Code is applicable to this Contract, by signing below Contractor does hereby represent, verify and warrant that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under § 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a "foreign terrorist organization" as defined in § 2252.151 of the Texas Government Code.

21. **PROHIBITION ON CONTRACTS WITH CERTAIN COMPANIES PROVISION.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Contractor is not on a list maintained by the State Comptroller's Office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

22. **Signatories.** Town warrants and represents that the individual executing this Agreement on behalf of Town has full authority to execute this Agreement and bind Town to the same. Consultant warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Consultant to same.

**IN WITNESS WHEREOF**, the Parties, having read and understood this Agreement, have executed such in duplicate copies, each of which shall have full dignity and force as an original, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**FREESE AND NICHOLS, INC.**

**TOWN OF PROSPER, TEXAS**

By: Clayton C Barnard  
Signature

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

Clayton Barnard, PE  
Printed Name

Mario Canizares  
Printed Name

Principal/Vice President  
Title

Town Manager  
Title

June 17, 2024  
Date

\_\_\_\_\_  
Date

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.  
FOR THE CUSTER ROAD 6.0 MG GROUND STORAGE TANK PROJECT (2412-WA)**

**I. PROJECT DESCRIPTION**

Freese and Nichols, Inc. (Engineer) has met with the Town and determined the scope of work and the services to be rendered. The general description of the work shall be as follows.

- A.** Design a new 6.0 MG ground storage tank at the pump station site including all necessary piping and appurtenances. Overflow of ground storage tank will be designed to sheet flow west of the site similar to the existing 3.0 and 5.0 MG ground storage tanks. Any additional on-site or off-site drainage studies or design is an additional service.
- B.** Study phase services to evaluate the best approach for implementing chloramine residual control improvements at the Town's Custer Road Pump Station (PS). The Site includes two existing ground storage tanks (GSTs) and one new GST will be added as part of this contract.  
Study phase services will be conducted to evaluate various chemical feed options and system siting options for implementation at the Custer Road PS. The project team will coordinate with the Town to select the specific residual control system elements and system siting to form the basis of design.  
The design phase scope will be defined upon completion of the study phase.

**II. BASIC SERVICES**

Consultant will design the features associated with this project. The design shall include the following.

**1. TASK 1 – RESIDUAL CONTROL IMPROVEMENTS – STUDY PHASE**

- a. General Meetings and Project Management**
  - i. Site Visit:** FNI will meet the Town at the Custer Road PS to assess the condition of the existing chemical feed system and examine potential spaces for proposing the installation of new equipment. FNI will work with the Town staff onsite to get an understanding of how the system is currently functioning and Town preferences for the system.
- b. Study Phase Services**
  - i. Data Review:** FNI will obtain and review distribution system water quality data from the Town, including total chlorine, free chlorine, monochloramine, free ammonia, pH, and water temperature data, to represent the water quality coming into the Custer Road PS and in the pump station's service area. FNI will also review the current, proposed, and future PS pumping and storage capacities.

ii. Technology Review Workshop: FNI will present the technologies, components, and cost associated with boosting chloramine residuals at the Custer Road PS including:

- Chlorine provision options (gaseous, bulk liquid, and onsite generated),
- Chemical pumping options, for liquid feed options (peristaltic pumps and diaphragm pumps),
- Chemical storage and containment options, including reuse of the existing tanks,
- Chemical injection strategies (in-line versus in-tank dosing),
- Residual control strategies, and
- In-tank mixing options.

The Town and FNI will identify up to two (2) alternatives consisting of the technologies and components from the above list to include in the basis of design evaluation.

Key Assumptions:

- Ammonia will be provided using liquid ammonium sulfate.

iii. Coordination with Town Fire Marshall: FNI will schedule one meeting with the Town's Fire Marshall to review the selected alternatives and identify any necessary safety requirements.

iv. Alternatives Development: Based on the alternatives selected for evaluation from the Technology Review Workshop, FNI will develop the following for each alternative:

- Process flow diagram,
- Conceptual site layout with yard piping for existing and proposed tanks,
- List of necessary TCEQ Chapter 290 exceptions as required,
- List of safety requirements per Fire Marshall coordination,
- Construction and project cost estimate, and
- Operating cost estimate.

Key Assumptions:

- The evaluation will be confined to the existing Custer Road PS site. If it is determined that the existing site does not have sufficient space for an alternative, an alternative site will be recommended, but a land acquisition study will not be included.

v. Draft Basis of Design TM: FNI will develop a Basis of Design Technical Memorandum (TM) that documents the chlorine/ammonium dosing rates, sizes equipment, compares monetary and non-monetary features for

current and anticipated site build-out of each alternative, and provides recommendations. FNI will submit one (1) electronic PDF copy of the draft TM.

- vi. Draft Basis of Design TM Review Meeting: FNI will conduct a virtual meeting with the Town to review the draft Basis of Design TM.
- vii. Final Basis of Design TM: FNI will update the draft TM based on comments received by Town staff and prepare a final memorandum. FNI will submit one (1) electronic PDF copy of the final TM.

## 2. TASK 2 - 60% DESIGN

- a. Conduct one (1) kick-off meeting with the Town to confirm the goals, schedule, and deliverables for the Project.
- b. Obtain and review all available data for the Project, including:
  - a. Previous Studies, Plans, and Specifications
- c. Evaluate placement of the ground storage tank in relation to existing facilities and future master-planned facilities and evaluate the different tank material choices and provide recommendations on tank siting and material.
- d. Provide preliminary civil and piping design for the yard piping and ground storage tank. Prepare plans and preliminary sections for installation of the proposed improvements based on existing as-built drawings.
- e. Prepare preliminary design of changes to the SCADA system to incorporate the ground storage tank into the Towns SCADA system.
- f. Prepare preliminary details associated with pavement removal and replace for GST construction.
- g. Prepare preliminary design of on-site drainage for the new ground storage tank overflow to the channel along the western property line of the site.
- h. Prepare required front-end and a table of contents of technical specifications for the Project. Engineer's standard specifications will be used.
- i. Prepare the Engineer's Opinion of Probable Construction Cost.
- j. Provide electronic copy of the set of 60% Construction Drawings, Contract and Specifications, and Opinion of Probable Construction Cost for review by the Town.
- k. Conduct a workshop with the Town to review the comments on 60% construction documents.

- I. Incorporate the comments of the Town regarding the 60% drawings and specifications to the 90% drawings and specifications.

### 3. TASK 3 - 90% DESIGN TASK

- a. Provide civil and piping design for the ground storage tank. Design will include details for the ground storage tank design and connection to existing yard piping. Prepare plans, sections and details for installation of the proposed improvements based on existing as-built drawings, field observations, and survey.
- b. Prepare design changes to the SCADA system to incorporate the ground storage tank.
- c. Prepare preliminary details associated with pavement removal and replace for GST construction.
- d. Prepare preliminary design and applicable details of on-site drainage for the new ground storage tank overflow to the channel along the western property line of the site.
- e. Prepare required front-end and technical specifications for the Project. Engineer's standard specifications will be used.
- f. Update the Engineer's Opinion of Probable Construction Cost.
- g. Provide electronic copy of 90% Construction Drawings, Contract and Specifications, and Opinion of Probable Construction Cost for review by the Town.
- h. Conduct a workshop with the Town to review the comments on 90% construction documents.
- i. Incorporate the comments of the Town regarding the 90% drawings and specifications and prepare final drawings and specifications for bidding.
- j. Provide electronic copy of final Construction Drawings, Contract and Specifications to the Town for bidding.
- k. Submit final Construction Drawings to TCEQ for a variance on the tank air gap design.

### 4. TASK 4 - BID PHASE Upon completion of the design services and approval of "Final" drawings and specifications by Town, Engineer will proceed with the performance of services in this phase as follows:

1. Assist Town by responding to questions and interpreting bid documents. Assist in issuing addenda to the bid documents to plan holders if necessary.
2. Attend a pre-bid conference for the construction project and coordinate responses with Town. Response to the pre-bid conference will be in the form of addenda issued after the conference, if necessary.



3. Provide updated plan sheets or technical specifications as needed based on addendums.
5. TASK 5 - CONSTRUCTION PHASE: Upon completion of the bid or negotiation phase services, Engineer will proceed with the performance of construction phase services as described below. Engineer will endeavor to protect the Town in providing these services. However, it is understood that Engineer does not guarantee the Contractor's performance, nor is Engineer responsible for supervision of the Contractor's operation and employees. Engineer shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. Engineer shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

The Town agrees to include provisions in the construction contract documents that will require the construction contractors to include Engineer and their subconsultants on this project to be listed as an additional insured on contractors' insurance policies.

1. Assist Town in conducting pre-construction conference with the Contractor, review construction schedules prepared by the Contractor pursuant to the requirements of the construction contract.
2. Establish communication procedures with the Town and contractor.
3. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects.
4. Make one visit per month for the estimated 12-month construction duration to the site to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort Engineer will endeavor to protect the Town against defects and deficiencies in the work of Contractors and will report any observed deficiencies to the Town. Visits to the site in excess of the specified number are an additional service.
5. Notify the contractor of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.
6. Interpret the drawings and specifications for the Town and Contractor. Investigations, analyses, and studies requested by the Contractor and approved by the Town, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.

7. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the Town to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the Town. Documentation of field orders, where cost to Town is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the Town are an additional service. Substitutions of materials or equipment or design modifications requested by the Town are an additional service.
  8. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the Town on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the Town if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of Engineer are an additional service.
  9. Conduct, in company with Town's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the Town in obtaining legal releases, permits, warranties, and spare parts from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor. Visiting the site to review completed work in excess of one trip is an additional service.
6. RESIDENT REPRESENTATION: Not Included.
7. TASK 6 – RECORD DRAWINGS: Upon construction completion, FNI to revise the construction documents in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Consultant shall provide electronic files in PDF and a DWG copy of the Record Drawings to the Town in accordance with the Town's spatial submission requirements.

### III. SPECIAL SERVICES

8. TASK 7 – TOPOGRAPHICAL SURVEY: Upon written notice to proceed, Consultant shall retain (as a subconsultant) and monitor the services of a surveying firm to perform surveying services for the project. The following survey shall be provided:
  1. Establish project control using Global Positioning System (GPS) methodology. Horizontal values will be based on the Texas State Plane Coordinate System, North American Datum of 1983, North Central Zone (4202) and scaled to surface using the Texas Department of Transportation grid to surface factor for Collin County (1.000152710). The vertical values will be based on GPS derived ellipsoid heights and adjusted to North American Vertical Datum of 1988 (NAVD88) elevations using

Geoid 12B. Control Points will also be tied into the Town of Prosper Geodetic Control Network.

2. Gather topographical survey from east of the existing 5 MG ground storage tank, northern fence line, and south to the existing 36" line and stub resulting in a survey area of approximately 1.5 acres. The survey will indicate all surface features, spot elevations, one-foot contours, fence lines, water valves, water tank, and edge of pavement, and drainage channel information along the west property line.
  3. Request Texas 811 Ticket and mark utilities as marked by others.
  4. Coordinate with the Town of Prosper to have Town utilities marked and survey the location of the Town utilities.
  5. Provide a digital design survey drawing in AutoCAD format showing visible surface features located, and ASCII point file and a copy of field notes and field sketches.
9. TASK 8 – SUBSURFACE UTILITY INVESTIGATION - Consultant shall retain (as a subconsultant) and monitor subsurface utility engineering (SUE) services. 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).
- a. 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:
    - i. Quality Level D (QL "D") – Information derived from existing records.
    - ii. Quality Level C (QL "C") – QL "D" information supplemented with information obtained by surveying visible above-ground utility features (i.e. valves, hydrants, meters, manhole covers, etc.).
    - iii. 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.
    - iv. Quality Level A (QL "A") – Also known as "locating", this quality level provides precise three-dimensional (x, y, z) information at critical locations by exposing specific utilities. Non-destructive vacuum excavation equipment is used to expose the utilities at specific points which are then tied down by survey.
  - b. For this project, QL's "A" SUE, as previously defined, will be provided. The QL "A" will consist of up to two (2) test holes, at the new ground storage tank location for the existing service line stubs.
  - c. Consultant and Sub-consultant will attempt to place the test holes outside the paved areas wherever possible. However, some test holes may need to be

placed in paved areas that may require traffic control measures to be implemented. Sub-consultant will establish routine/ordinary traffic control (cones and free-standing signage, etc.) whenever required as part of this scope. If non-routine traffic control measures are required (barricades, flag person, changeable message board, etc.) these services will be additional to the contract.

10. TASK 9 – GEOTECHNICAL ENGINEERING: The Town of Prosper is planning to construct a 6-million-gallon (MG) ground storage tank at the existing pump station site located about 2200 feet northwest of the intersection of Custer Road and Highway 380 in Prosper, Texas. The project includes the design of one 6 MG ground storage tank and is anticipated to be constructed near existing grade (tank will not be partially buried). The site currently has two pump station buildings and two ground storage tanks (one 3 MG and one 5 MG). The proposed geotechnical scope of work for the project will consist of field exploration, laboratory testing, engineering analysis, and reporting foundation recommendations, as presented below.

a. Task 1 – Field Exploration

- i. Select and mark 5 boring locations at the ground storage tank site and notify Texas 811 and the City to request location and marking of existing underground utilities prior to the field exploration.
- ii. Subcontract with a geotechnical drilling contractor to drill the borings to the following depths:
  - 1 boring to a depth of 60 feet
  - 4 borings to a depth of 35 feet

Samples will be collected intermittently using continuous flight augers and either split- spoon or tube samplers. Rock and rock-like materials will be cored or tested insitu using a TxDOT Cone Penetration Test. At completion, the boreholes will be backfilled with auger cuttings.

- iii. 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).

b. Task 2 – Laboratory Testing

- i. 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.

- ii. 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:
  - Classification tests (liquid and plastic limits and percent passing the no. 200 sieve or gradation)
  - Moisture content
  - Dry unit weight
  - Unconfined compressive strength
  - Swell tests

c. Task 3 – Engineering Analysis

- i. Prepare a technical memorandum of the geotechnical investigation to include:
  - Attachment with the boring locations, boring logs, laboratory test results, and a key to the symbols used.
  - Discussion of subsurface conditions and soil properties indicated by the field and laboratory work, and the implications for design.
  - Foundation and site preparation recommendations for the proposed ground storage tank and yard piping.
  - Earthwork related recommendations for use during development of the plans and specifications.

Assumptions:

All boring locations will be accessible using a truck-mounted drill rig.

**11. TASK 10 – CHEMICAL INJECTION FINAL DESIGN**

- a. Provide preliminary and final design of the chemical injection system which will be determined after the completion of Task 1 – Chemical Injection Study Phase.

**IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES:**

**Additional Services not included in the existing Scope of Services** – Town and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the Town’s written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope

of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

- A. Providing services for studies, analysis or design for modifications of the existing chemical system.
- B. Providing environmental impact studies associated with drainage or other factors.
- C. 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.
- D. 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 the Town.
- E. 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.
- F. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- G. Preparing Operation and Maintenance Manuals or conducting operator training.
- H. Preparing data and reports for assistance to the Town 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.
- I. Assisting the Town 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), regulatory agencies or other third parties.
- J. 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.
- K. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- L. 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.
- M. Services required to resolve bid protests or to rebid the projects for any reason.

- N. 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.
- O. Providing services after the completion of the construction phase not specifically listed in the Basic Services.
- P. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- Q. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of Consultant.
- R. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- S. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- T. Provide follow-up professional services during Contractor's warranty period.
- U. Preparation of a Storm Water Pollution Prevention Plan (SWPPP) and/or associated erosion control plan.

## V. DELIVERABLES:

Task 1 – Residual Control Improvements - Study Phase	Draft Basis of Design Technical Memorandum
Task 2 & 3 – Preliminary & Final Design	Provide Preliminary and Final design plans and specifications for the 6.0 MG ground storage tank.
Task 4 – Bid Phase	Assist the Town in securing bids and issuing construction plans and specifications for the design of the project.
Task 5 – Construction Phase	Provide limited general construction representative services throughout the construction of the project.
Task 6 – Record Drawings	One (1) PDF copy of each sheet of the record drawings One (1) DWG of the record drawings base map
Task 7 – Topographical Survey	AutoCAD file with horizontal and vertical control points, property lines, existing easements, existing utilities and 1-foot contours.
Task 8 – Subsurface Utility Engineering (SUE)	AutoCAD file with horizontal and vertical elevation of Level A locations.
Task 9 – Geotechnical Engineering	Provide Draft and Final Geotechnical report for the 6.0 MG ground storage tank.
Task 10 – Residual Control Improvements - Final Design	Deliverables to be determined after the completion of Task 1 – Residual Control Improvements - Study Phase



**EXHIBIT B  
COMPENSATION SCHEDULE**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.  
FOR THE CUSTER ROAD 6.0 MG GROUND STORAGE TANK PROJECT (2412-WA)**

**I. COMPENSATION SCHEDULE**

Task	Completion Schedule	Compensation Amount
Notice-to-Proceed	July 2024	\$0
Task 1 – Residual Control Improvements - Study Phase	November 2024	\$40,000
Task 2 - Preliminary Design	April 2025	\$106,100
Task 3 - Final Design	August 2025	\$174,100
Task 4 - Bid Phase	November 2025	\$21,850
Task 5 - Construction Phase	May 2027	\$82,600
Task 6 – Record Drawings	June 2027	\$13,900
Task 7 - Topographical Survey	August 2024	\$6,650
Task 8 - Subsurface Utility Engineering (SUE)	August 2024	\$8,800
Task 9 - Geotechnical Engineering	November 2024	\$45,500
Task 10 – Residual Control Improvements - Final Design	TBD	\$100,000
<b>Total Compensation</b>		<b>\$599,500</b>

**II. COMPENSATION SUMMARY**

Basic Services (Lump Sum)	Schedule	Amount
Task 1 – Residual Control Improvements - Study Phase	November 2024	\$40,000
Task 2 – Preliminary Design	April 2025	\$106,100
Task 3 - Final Design	August 2025	\$174,100
Task 4 - Bid Phase	November 2025	\$21,850
Task 5 - Construction Phase	May 2027	\$82,600
Task 6 – Record Drawings	June 2027	\$13,900
<b>Total Basic Services:</b>		<b>\$438,550</b>

Special Services (Hourly Not-to-Exceed)	Schedule	Amount
Task 7 - Topographical Survey	August 2024	\$6,650
Task 8 - Subsurface Utility Engineering (SUE)	August 2024	\$8,800
Task 9 – Geotechnical Engineering	November 2024	\$45,500
Task 10 – Residual Control Improvements - Final Design	TBD	\$100,000
<b>Total Special Services:</b>		<b>\$160,950</b>

<b>Direct Expenses</b>	<b>Schedule</b>	<b>Amount</b>
None		\$0
<b>Total Direct Expenses:</b>		<b>\$0</b>

## EXHIBIT B COMPENSATION/PRICING SCHEDULE

Compensation to FNI for Basic Services in Attachment SC shall be the lump sum of Eighty Thousand Five Hundred Dollars (\$80,500).

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 Sixty Six Thousand One Hundred Fifty Dollars (\$66,150).

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	96	188
Professional 2	114	188
Professional 3	136	294
Professional 4	136	334
Professional 5	213	367
Professional 6	235	445
Construction Manager 1	103	122
Construction Manager 2	103	184
Construction Manager 3	147	184
Construction Manager 4	169	235
Construction Manager 5	195	279
Construction Manager 6	268	331
Construction Representative 1	85	103
Construction Representative 2	96	103
Construction Representative 3	118	173
Construction Representative 4	122	195
CAD Technician/Designer 1	74	144
CAD Technician/Designer 2	118	177
CAD Technician/Designer 3	162	235
Corporate Project Support 1	67	144
Corporate Project Support 2	81	206
Corporate Project Support 3	96	379
Intern / Coop	52	89

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

### **OTHER DIRECT EXPENSES:**

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. 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 1.15. For Resident Representative services performed by non-FNI employees and CAD services performed in-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

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

16/02/2023

## EXHIBIT C INSURANCE REQUIREMENTS

Service provider shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by the service provider. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to the Town prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

### A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. ISO Form Number GL 00 01 (or similar form) covering Commercial General Liability. "Occurrence" form only, "claims made" forms are unacceptable, except for professional liability.
2. Workers Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract.
4. Professional Liability, also known as Errors and Omissions coverage.

### B. MINIMUM LIMITS OF INSURANCE

Service Provider shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$500,000 per occurrence /\$1,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
  - a. Premises / Operations
  - b. Broad Form Contractual Liability
  - c. Products and Completed Operations
  - d. Personal Injury
  - e. Broad Form Property Damage
2. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 each accident, \$300,000 Disease- Policy Limit, and \$100,000 Disease- Each Employee.
3. Automobile Liability: \$500,000 Combined Single Limit. Limits can only be reduced if approved by the Town. Automobile liability shall apply to all owned, hired, and non-owned autos.
4. Professional Liability aka Errors and Omissions: \$500,000 per occurrence and in the aggregate.

### C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions in excess of \$10,000 must be declared to and approved by the Town.

**D. OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the provider, products and completed operations of the provider, premises owned, occupied or used by the provider. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
- b. The provider's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the provider's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards and commissions or volunteers.
- d. The provider's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the insured's limits of liability.

2. Workers Compensation and Employer's Liability Coverage:

The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees and volunteers for losses arising from work performed by the provider for the Town.

3. All Coverages:

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after 30 days written notice to the Town for all occurrences, except 10 days written notice to the Town for non-payment.

4. Professional Liability and / or Errors and Omissions:

"Claims made" policy is acceptable coverage, which must be maintained during the course of the project, and up to two (2) years after completion and acceptance of the project by the Town.

**E. ACCEPTABILITY OF INSURERS**

The Town prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than **A- VI**, or better.

**F. VERIFICATION OF COVERAGE**


Service Provider shall provide the Town with certificates of insurance indicating the coverages required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.

Certificate holder to be listed as follows:

Town of Prosper  
P.O. Box 307  
Prosper, TX 75078



**EXHIBIT E  
CONFLICT OF INTEREST QUESTIONNAIRE**

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b>		<b>FORM CIQ</b>		
<b>For vendor doing business with local governmental entity</b>				
<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="padding: 2px;">OFFICE USE ONLY</th> </tr> <tr> <td style="padding: 2px;">Date Received</td> </tr> </table>		OFFICE USE ONLY	Date Received
OFFICE USE ONLY				
Date Received				
<p><b>1</b> Name of vendor who has a business relationship with local governmental entity.</p> <p align="center">None</p>				
<p><b>2</b> <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>				
<p><b>3</b> Name of local government officer about whom the information is being disclosed.</p> <p align="center">N/A</p> <p align="center">_____</p> <p align="center">Name of Officer</p>				
<p><b>4</b> Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p align="center">N/A</p> <p>A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p align="center"> <input type="checkbox"/> Yes      <input type="checkbox"/> No         </p> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p align="center"> <input type="checkbox"/> Yes      <input type="checkbox"/> No         </p>				
<p><b>5</b> Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p> <p align="center">N/A</p>				
<p><b>6</b> <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>				
<p><b>7</b></p> <p align="center">             _____            Signature of vendor doing business with the governmental entity         </p> <p align="right">           June 17, 2024            _____            Date         </p>				
<p>Form provided by Texas Ethics Commission      <a href="http://www.ethics.state.tx.us">www.ethics.state.tx.us</a>      Revised 11/30/2015</p>				