

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.
FOR THE CRAIG STREET ELEVATED STORAGE TANK REHABILITATION PROJECT (2520-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."

W I T N E S S E T H:

WHEREAS, Town desires to obtain professional engineering services in connection with the **Craig Street Elevated Storage Tank Rehabilitation Project (2520-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 **Three Hundred Sixty Eight Thousand Nine Hundred Fifty Dollars** (\$368,950) 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

Town of Prosper
Mario Canizares, Town Manager
PO Box 307
Prosper, TX 75078
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. **IRAN, 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 13, 2025
Date

Date

EXHIBIT "A"
SCOPE OF SERVICES

PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.
FOR THE CRAIG STREET ELEVATED STORAGE TANK REHABILITATION PROJECT (2520-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.

This project includes the rehabilitation design of the existing 2.0 MG Craig Elevated Storage Tank (EST). The design will be based on the observations of the site visit conducted on April 2nd, 2025 as well as the issues identified by the Town. The project will include formal 60% design, and 100% design review submittals. Review meetings will be included in between the 60% and 100% submittals, and before the final signed and sealed submittal. Freese and Nichols, Inc. will provide bid phase services, and general representation during the construction phase.

The current rehabilitation needs based upon discussions with the Town and the Site Visit conducted on April 2nd, 2025 are as follows:

1. Interior ceiling coating system is in poor condition and support system shows signs of corrosion. Town to provide FNI with video/photo support from the forthcoming pressure washing efforts.
2. Interior and exterior coating system is at end of life span and in need of blast/recoat.
3. Replacement of vent at top landing. Prefer a louvered vent that can be opened and closed dependent on season.
4. Replacement of conduit grommets adjacent to roof hatch.
5. Coordination with cellular entities for repair operations. Relocation of cellular cabling from the ladder structures to facilitate safe climbing.
6. Landscaping improvements including the replacement of 2-4 shrubs adjacent to the Verizon communications building.
7. Combine the two irrigation controllers into the controller located at the pedestal interior. No other irrigation improvements are planned.
8. Replacement of the interior and exterior metal halide wall packs with LED fixtures.
9. Replacement of the interior compact fluorescent wall mount lights with wire guard with similar form LED fixtures.
10. Replacement of the exterior convenience receptacles and covers with cast metal type.
11. Replacement of the heat trace system at the pedestal interior, as well as the addition of heat trace to the 6" drain line at the top landing.
12. Replacement of the existing overhead door manual operator with a motor operator.
13. Replacement of the exterior electrical equipment rack supports.
14. Improvements to the FAA obstruction light system including replacement of rooftop lighting assembly, and addressing the control panel's missing flashing function.
15. Addition of PIT-02 (pressure transducer) on distribution system side of the Cla-Val. PIT addition will utilize existing pipe tap and wiring/conduit.
16. Update of the logo on the tank to the Town's current logo branding. No rendering or

logo design assistance is planned.

II. GENERAL REQUIREMENTS

- A.** Consultant will coordinate the efforts of sub consultants involved in the project, including inspectors, and the Town Staff. Provide oversight of the schedule to maintain desired schedule.
- B.** Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the Town. The report is to be submitted with the monthly invoice.
- C.** The tank assessments and recommendations will be based on the existing data provided by the Town and observations gathered in the field.

III. BASIC SERVICES

Consultant will provide the following services associated with this project upon notice to proceed.

A. TASK 1 – Intermediate Design (60%)

- 1. Consultant will conduct a kickoff meeting with the Town to discuss data needed for the rehabilitation of the EST, review scope and discuss schedule.
- 2. Review the tank site to supplement existing tank site information provided by the Town. The Town will provide all available layout drawings, shop drawings, existing coatings data and geotechnical reports available on the tank.
- 3. Prepare preliminary design plan sheets. 60% plans will include information on the noted tank repair and electrical improvements. No site or drainage improvements are planned, but they can be provided as an additional service if deemed necessary.
- 4. Prepare and submit contract and bid documents with preliminary project manual at 60%.
- 5. Prepare preliminary details for tank rehabilitation aspects. The 60% plans shall include all standard details required for construction.
- 6. It is anticipated that only minor electrical improvements are needed for heat trace additions, and LED lighting improvements, and FAA lighting improvements.
- 7. Prepare estimate of probable construction cost.
- 8. Prior to completing the 60% design, meet with the Town to review the design progression and incorporate any feedback received into the formal submittal.

9. Submit two (2) copies of preliminary plans (2 – 11"x17"), preliminary project manual, and preliminary OPCC for the Town review and TOWN's distribution to the necessary developers.
10. Conduct one (1) meeting with the Town to discuss comments and elements mid-way through the 60% submittal and at the end of the 60% submittal, total of two (2) meetings.
11. Assist the Town with franchise utility coordination. It is assumed that the Town will initiate and provide contact information for the affected cellular entities. FNI will meet up to two (2) times with franchise utility providers.

B. TASK 2 –Final Design (100%)

1. Upon approval of intermediate design in Task 1, Engineer to prepare final plans based Town comments.
2. Engineer will begin to prepare final plans (each sheet to be stamped, dated, and signed by Consultant) and submit bid proposal quantities, special provisions and technical specifications. The final submittal shall include the following;
 - a. Town title page with location map and sheet index.
 - b. Project Layout Sheet, General Notes, Summary of Quantities, and general "aerial background" site layout (no survey).
 - c. Special repair detail and standard detail sheets. Town standard details may be incorporated as needed.
 - d. Bid proposal, quantities, special provisions, Town standard contract documents and technical specifications.
3. Engineer will send the Town the 100% unsigned QC set of plans for the Town to review. Attend a meeting to review any comments received on the unsigned 100% submittal with the Town. Incorporate any necessary changes and finalize the plans.
4. Provide Town two (2) copies of the 100% sealed approved and dated plans (2 – 11"x17"), final project manual, and final cost estimate.
5. Furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.

C. TASK 3 – Bid Phase (100%)

1. Assist Town in securing bids for the project. Provide a copy of the notice to bidders for Town to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by the Town.
2. Assist the Town during the bid phase with answering questions received from prospective bidders during bid phase. Provide additional information and issue addenda, if required, during the bid phase.
3. Assist the Town in conducting 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. Attend the tour of the project site after the pre-bid conference.
4. FNI will attend the bid opening and assist Town in analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by Town.
5. Assist Town in the preparation of Construction Contract Documents for construction contracts. Provide eight (8) sets of Construction Contract Documents which include information from the selected bidders' bid documents, legal documents, and addenda bound in the documents for execution by the Town and construction contractor. Distribute three (3) copies of these documents to the contractor with a notice of award that includes directions for the execution of these documents by the construction contractor. Provide Town with the remaining five (5) copies of these documents for use during construction. Additional sets of documents can be provided as an additional service.
6. Furnish contractor copies of the drawings and specifications for construction pursuant to the General Conditions of the Construction Contract.
7. Deliverables for the Bid Phase include:
 - a. Notice to Bidders
 - b. Electronic copies of plans, project manual, bidding documents, and addenda
 - c. Recommendation of Award with tabulation of bids
 - d. Conformed contract documents for execution
 - e. Copies of conformed contract documents for Contractor and Town

D. TASK 4 – Construction Phase General Representation

1. Assist Owner 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 and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals (20 estimated), in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
3. Make visits (monthly, up to a total of 6) appropriate to the stage of construction to the site (as distinguished from the continuous services of a Resident Project Representative) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the Owner against defects and deficiencies in the work of Contractors and will report any observed deficiencies to Owner. Visits to the site in excess of the specified number are an additional service. Visits to be in conjunction with monthly construction progress meetings. FNI to run monthly meetings, develop agenda and take meeting minutes.
4. 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.
5. Interpret the drawings and specifications for Owner and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by Owner, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
6. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the Owner to determine the cost and time impacts of these changes. Documentation of field orders, where cost to Owner 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 Owner are an additional service. Substitutions of materials or equipment or design modifications requested by the Owner are an additional service.
7. 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 Owner 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 Owner if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.

8. Conduct, in company with Owner'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 Owner in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two trips are an additional service.

E. TASK 5 – Record Drawings

1. Consultant shall modify the Final Drawings electronically and shall place a stamp on the plans indicating they represent Record Drawings of the project as constructed. The stamp shall be signed and dated by the Engineer of Record and shall be placed on each plan sheet, whether there are any revisions on the sheet or not. Each sheet shall clearly indicate all changes which apply to that sheet by clouding and numbering, or other suitable means.

The following disclaimer shall be included with the Record Drawing stamp:

These Record Drawings were prepared using information provided by others and represent them as constructed conditions to the extent that documented changes were provided for recording. The Engineer assumes no liability for undocumented changes and certifies only that the documented changes are accurately depicted on these drawings.

2. Consultant shall submit a set of sealed Final Drawings, modified and stamped as Record Drawings, in PDF and DWG format. Consultant may keep copies of the information provided by the Town for their files, but all original, red-lined drawings shall be returned to the Town with the digital files.
3. Record Drawings shall be PDF and DWG.

IV. SPECIAL SERVICES

Consultant will provide the following services associated with this project upon written authorization from the Town.

A. TASK 6 – Boswell Part-time Inspection

1. Pre-Construction Meeting

- a. Attend one virtual preconstruction meeting.
- b. A report will not be provided by Boswell & Reyes (BRI) for attendance of the meeting.

2. Tank Welding Repairs

- a. Visit the project site up to six (6) times, eight hours maximum per trip for inspection of welding repairs. AWS CWI Inspector, Inspection to include:
 - i. Verify welder certification and welder procedures for the project.
 - ii. Verify welding work is being performed in accordance with the submitted welding procedures.
 - iii. Verify required electrodes for the project are being used.
 - iv. Inspect quality of welds.
 - v. Provide reports for inspection visits that include photos once per week.
- b. Project Management and Administration, does not include site visits.

3. Tank Painting

- a. Visit project up to fifty-two (52) times, eight hours maximum per trip for inspection of tank interior and exterior abrasive blasting and painting. NACE Level I Inspector, Inspection to include:
 - i. Verify abrasive blasting materials.
 - ii. Inspection of abrasive quality of prepared surfaces.
 - iii. Inspection of anchor profile of prepared surfaces.
 - iv. Verify coating batch numbers and manufacture dates - shelf life.
 - v. Verify mixing of coatings for application.
 - vi. Inspection and measure application of coating.
 - vii. Witness the contractor perform tank interior Holiday testing.
 - viii. Provide reports for inspection visits that include photos once per week.
- b. Project Management and Administration, does not include site visits.

V. 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 detailed electrical and SCADA inspection and/or design services.
- C. Providing design services for tank and site improvements.
- D. Providing studies or design of on-site or off-site drainage including storage tank overflow drainage.
- E. Preparation and/or permitting submittals, including TCEQ.
- F. Providing environmental impact studies associated with drainage or other factors.
- G. 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.
- H. 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.
- I. 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.
- J. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- K. 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.
- L. 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.

- M. 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.
- N. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- O. 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.
- P. 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.
- Q. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- R. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.

VI. DELIVERABLES:

60% Design Submittal (Plans, Spec
TOC, OPCC)

100% Design Submittal (Plans, Specs,
OPCC)

Record Drawings

**EXHIBIT B
COMPENSATION SCHEDULE**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.
FOR THE CRAIG STREET ELEVATED STORAGE TANK REHABILITATION PROJECT (2520-WA)**

I. COMPENSATION SCHEDULE

Task	Completion Schedule	Compensation Amount
Notice-to-Proceed	June 2025	\$0
Task 1 – Intermediate Design (60%)	November 2025	\$100,100
Task 2 – Final Design (100%)	February 2026	\$106,800
Task 3 – Bid Phase	June 2026	\$18,450
Task 4 -Construction General Rep	May 2027	\$59,500
Task 5 – Record Drawings	May 2027	\$7,400
Task 6 – Boswell Part-time Inspection	May 2027	\$76,700
Total Compensation		\$368,950

II. COMPENSATION SUMMARY

Basic Services (Lump Sum)	Schedule	Amount
Task 1 – Intermediate Design (60%)	November 2025	\$100,100
Task 2 – Final Design (100%)	February 2026	\$106,800
Task 3 – Bid Phase	June 2026	\$18,450
Task 4 -Construction General Rep	May 2027	\$59,500
Task 5 – Record Drawings	May 2027	\$7,400
Total Basic Services:		\$292,250

Special Services (Hourly Not-to-Exceed)	Schedule	Amount
Task 6 – Boswell Part-time Inspection	May 2027	\$76,700
Total Special Services:		\$76,700

Direct Expenses	Schedule	Amount
None	N/A	\$0
Total Direct Expenses:		\$0

EXHIBIT B

COMPENSATION/PRICING SCHEDULE

COMPENSATION

Compensation to FNI for Basic Services in Attachment SC shall be the lump sum of Two Hundred Ninety Two Thousand Two Hundred Fifty Dollars (\$292,250).

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 Seventy Six Thousand Seven Hundred Dollars (\$76,700).

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	107	206
Professional 2	125	213
Professional 3	155	327
Professional 4	169	393
Professional 5	224	408
Professional 6	254	478
Construction Manager 1	118	180
Construction Manager 2	133	217
Construction Manager 3	173	224
Construction Manager 4	184	279
Construction Manager 5	224	342
Construction Manager 6	301	408
Construction Representative 1	96	118
Construction Representative 2	107	136
Construction Representative 3	114	206
Construction Representative 4	147	217
CAD Technician/Designer 1	78	140
CAD Technician/Designer 2	111	221
CAD Technician/Designer 3	147	261
Corporate Project Support 1	81	180
Corporate Project Support 2	89	265
Corporate Project Support 3	111	382
Intern / Coop	59	107

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates		<u>B&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) \$500
<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	Ultrasonic Thickness Gauge (per day) \$275
				Coating Inspection Kit (per day) \$275
	Mounting (per sq. ft.)	\$2.00		Flushing / Cfactor (each) \$500
	Binding (per binding)	\$0.25		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 2025.

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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

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.
FOR THE CRAIG STREET ELEVATED STORAGE TANK REHABILITATION PROJECT (2520-WA)**

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EXHIBIT E CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</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>		OFFICE USE ONLY <div style="border: 1px solid black; height: 100px; width: 100%;"></div>
1 Name of vendor who has a business relationship with local governmental entity. <div style="text-align: center;">None</div>		
2 <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.)		
3 Name of local government officer about whom the information is being disclosed. <div style="text-align: center;">N/A</div> <div style="text-align: center; font-size: small;">Name of Officer</div>		
4 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. <div style="text-align: center;">None</div> <div style="margin-top: 20px;"> <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> <div style="display: flex; justify-content: center; gap: 50px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> <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> <div style="display: flex; justify-content: center; gap: 50px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> </div>		
5 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. <div style="text-align: center;">N/A</div>		
6 <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).		
7 <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;"> Signature of vendor doing business with the governmental entity </div> <div style="text-align: center;"> June 13, 2025 Date </div> </div>		

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 11/30/2015