

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.,
FOR THE WATER, WASTEWATER, AND ROADWAY IMPACT FEE UPDATE PROJECT**

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 Water, Wastewater, and Roadway Impact Fee Update Project, 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 Two Hundred Ninety Nine Thousand Six Hundred Dollars (\$299,600) 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.
Melissa Brunger, P.E., Associate
2711 N Haskell Ave, Suite 3300
Dallas, TX 75204
Melissa.brunger@freese.com

Town of Prosper
Bob Scott, Interim Town Manager
PO Box 307
Prosper, TX 75078
bscott@prosper.tx.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.

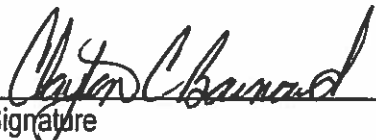
20. **Signatories.** Town warrants and represents that the individual executing this Agreement on behalf of Town has full authority to execute this Agreement and bind Town to the same. Consultant warrants and represents that the individual executing this Agreement on its behalf has full authority to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


Signature

Clayton Barnard, P.E.

Printed Name

Vice-President / Principal

Title

2-3-2023

Date

By:

Signature

Bob Scott

Printed Name

Interim Town Manager

Title

Date

EXHIBIT A SCOPE OF SERVICES

PROFESSIONAL ENGINEERING SERVICES AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC., FOR THE WATER, WASTEWATER, AND ROADWAY IMPACT FEE UPDATE PROJECT

I. PROJECT DESCRIPTION:

The purpose of this project is to update the Town's water, wastewater, and roadway capital improvement plans and impact fees.

II. TASK SUMMARY

BASIC SERVICES (LUMP SUM)

Task 1: Kickoff Meeting, Data Collection & Land Use Assumptions

- A1. Project Management: FNI will perform project management duties, including preparing and updating the project schedule, monthly invoicing, development of monthly progress reports, and informal project collaboration.
- A2. Project Kickoff Meeting and Obtain Data: Freese and Nichols, Inc. (FNI) will provide the Town with a Data Request Memorandum listing the data needed for this study. FNI will hold a conference call with the Town that will include discussion of the following:
- Present and discuss methodology and approach
 - Scheduling and project coordination
 - Information and data needs from the Town
 - Advisory Committee Meetings
- A3. Roadway Data Collection: FNI will collect traffic volume count data at up to fifteen (15) locations for the program update. Peak hour bi-directional counts will be collected by contractor GRAM Traffic North Texas, and GRAM will be a subconsultant to FNI. FNI will assemble available roadway inventory, pertinent roadway construction cost data and traffic count data available from the Town.
- A4. Develop Land Use Assumptions: Town Staff will develop non-residential and population projections for existing, 5-year, 10-year, and buildout conditions by planning area and provide the data to FNI in a GIS shapefile or Excel spreadsheet.

Task 2: Water and Wastewater System Analysis and CIP Update

- B1. Develop and Distribute Updated Water Demands: FNI will review historical water usage records and use information to update per capita water usage, non-residential usage and peaking factors. FNI will develop water demand projections for existing, 5-year, 10-year and buildout conditions. FNI will obtain and geocode water billing records to distribute existing calculated water demands. FNI will utilize population and non-residential growth by service area to distribute future calculated water demands.
- B2. Develop and Distribute Updated Wastewater Flows: FNI will review historical wastewater flows to update per capita wastewater usage, non-residential usage and peaking factors. FNI will develop wastewater flow projections for existing, 5-year, 10-year and buildout conditions. FNI will allocate existing and future calculated wastewater flows into the wastewater model based on population and non-residential growth by service area.

- B3. Identify and Map Pressure Recorder Locations: FNI will identify focused locations for field pressure testing based on specific areas of concern from Town. Up to ten (10) pressure testing recorders will be furnished by FNI. FNI will prepare procedures for field testing showing proposed location of testing, duration of testing, required SCADA data during testing period, and assistance from water utility department.
- B4. Conduct Temporary Pressure Testing: FNI will assist and coordinate with Town in performing pressure testing. Testing will consist of recording pressure readings for a one to two week time period along with needed SCADA data during field testing. The Town will be responsible for installing and removing the pressure recorders on the designated fire hydrants.
- B5. Water System Model Update and Calibration: FNI will utilize updated GIS files of the water system and record drawings of recently constructed improvements to update the existing InfoWater model with all pipelines. FNI will conduct a 24-hour extended period simulation model calibration run for the water system model to confirm the model represents real-world operational conditions.
- B6. Perform Modeling of Existing Water System: FNI will utilize the updated water model to perform a 24-hour extended period simulation modeling of the existing water system under maximum day water demand conditions, which includes peak hour. FNI will also develop a maximum day steady state run to evaluate fire flow operating conditions. These model runs will be used to determine capacity and deficiencies within the existing water system. The task will also include an evaluation of hourly SCADA data to develop the demand pattern for the maximum day extended period model run. FNI will evaluate the Town's compliance with TCEQ capacity requirements including elevated storage, total storage, and pumping capacity.
- B7. Identify and Map Flow Monitoring Locations: FNI will identify up to ten (10) locations for flow monitoring based on model calibration needs and areas of concern from the Town. FNI will prepare procedures for testing showing proposed locations of testing, duration of testing, and required data and assistance from the Town during testing period.
- B8. Conduct Flow Monitoring: FNI will assist and coordinate with the Town in performing flow monitoring. Velocity and depth readings will be obtained at 15-minute intervals to allow analysis of flow at that point. The flow metering equipment will be maintained, and data collected for a period of sixty (60) days to cover representative dry weather flows and any rainfall events which may happen to occur. Two (2) rainfall gauges will also be installed within the study area to obtain localized rainfall data.
- B9. Flow Data Analysis and Evaluation: FNI will reduce raw field monitoring data and tabulate 15-minute flow data for the entire flow monitoring period. FNI will evaluate temporary flow meter data to quantify base average dry weather flow, peak dry weather flow, and peak wet weather flow rates, quantity of infiltration and inflows from each sewer basin, and update recommendations for infiltration and inflow allowances.
- B10. Conduct Wastewater Model Calibration: FNI will conduct model calibration by adjusting Manning's roughness factors, force main C-factors, peaking factors, and load distribution until modeling results match the field measurements. FNI will provide comparison graphs and mapping to document model calibration results.
- B11. Update Wastewater System Model and Existing System Analysis: FNI will convert the wastewater model from H2OMAP Sewer to InfoSewer software and update the model using the updated GIS and as-built drawings of facilities. The model will consist of 10-inch and larger lines and critical 8-inch lines. FNI will utilize the updated model to perform modeling of the existing wastewater system.
- B12. Review Meeting: FNI will meet with Town Staff to discuss water demand and wastewater flow projections, water model calibration, wastewater model calibration and existing system analysis.
- B13. Determine Water and Wastewater System Improvement Alternatives: FNI will utilize buildout system water and wastewater model runs to determine improvement alternatives needed to meet projected growth through Buildout. FNI

will utilize the 5-year and 10-year model runs to determine which improvement alternatives are needed in the next 5 and 10 years, respectively. Wastewater facilities and lines will be sized to meet peak wet weather flows, and water facilities and lines will be sized to provide adequate fire flows under maximum day demand conditions and meet peak hour demands with adequate residual pressures. Water system analysis will include 24-hour extended period analysis.

- B14. Develop Draft Water and Wastewater Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping: FNI will develop costs for each proposed water and wastewater system project. Costs will be in Year 2023 dollars and will include engineering and contingencies. FNI will develop draft CIP scheduling of projects based on modeling and mapping showing project locations. FNI will also develop maps with only impact fee eligible projects.
- B15. Review Meeting: FNI will meet with the Town to discuss future water and wastewater system improvements.

Task 3: Water and Wastewater Impact Fee Analysis

- C1. Determine Water and Wastewater CIP Capacity and Calculate Water & Wastewater Costs Eligible for Impact Fee Cost Recovery: Following approval of the water and wastewater impact fee CIPs by Town Staff, FNI will determine the existing and projected 10-year utilized capacity of water and wastewater capital improvements. FNI will utilize project costs of water and wastewater system improvements and percent utilization of improvements to support growth over the next 10-year time period to calculate water and wastewater costs to be applied for impact fee analysis.
- C2. Develop Service Unit Equivalents (SUEs) for Water & Wastewater: FNI will utilize equivalent capacity of water meters to establish the service unit equivalents (SUEs) required in Chapter 395 of the Local Government Code for both existing and 10-year projected growth conditions for water and wastewater.
- C3. Calculate Maximum Allowable Water and Wastewater Impact Fees without Credit Calculation: FNI will develop maximum allowable water and wastewater impact fees in accordance with Chapter 395 of the Texas Local Government Code using existing and proposed capital improvement costs to support 10-year growth based on projected increase in SUEs. FNI will utilize the 50% credit methodology outlined in Chapter 395. A detailed credit calculation will not be performed.

Task 4: Roadway Impact Fee Analysis

- D1. Existing Capital Improvements Inventory Update: Based on the data assembled and collected and service area boundaries, an inventory and analysis of existing roadways will be prepared for major roadways in the Town. The inventory will contain the following information of existing collector and arterial status roadways by service area:

- Roadway segment name and limits
- Length (in miles), number of lanes and facility type (divided, undivided, collector, arterial, etc.)
- PM peak hour directional volumes

As existing conditions analysis will be prepared to calculate capacity provided and utilized of existing capital improvements. Any roadway deficiencies identified will be summarized by service area for use in the capital improvements analysis.

- D2. Determination of Projected Roadway Demand: Determination of projected roadway demand over the 10-year planning period will be based on socio-demographic data developed in the land use assumptions report prepared as part of the update process. FNI will coordinate with the Study Team to ensure growth projections are compatible with travel forecast needs. The service unit equivalency table developed in Task D5 will serve as the basis for determination of the number of service units generated within individual service areas over the ten-year planning period.
- D3. Prepare Roadway Capital Improvements Program: An updated impact fee CIP will be prepared incorporating growth considerations over the ten-year plan period, the Town Thoroughfare Plan, fiscal constraints and Town Staff input.

This process will include the identification and recommendation of specific roadway projects for inclusion into the impact fee CIP list. Cost information of both existing and proposed capital projects will be collected and developed for inclusion into an updated CIP database. For completed projects (identified as part of the previous impact fee system CIP), incorporation of actual cost data will be included as per legislative requirements. The Town will provide cost data for completed projects and will include costs incurred for construction, engineering right-of-way and debt service. For projects additions to CIP, appropriate historic unit cost data will be collected from the Town and used as a basis for cost estimates by FNI.

An evaluation of existing impact fee CIP projects will also be performed to confirm that excess capacity is available for projects to be retained in the impact fee program.

- D4. Roadway CIP Database Update and Maximum Fee Calculation: CIP data will be compiled into an updated roadway projects database. This database will be prepared by service area and include the following information:
- Roadway segment name and limits.
 - Number of lanes, length and facility type.
 - Project cost information (construction, engineering, ROW, debt service).
 - Capacity provided by CIP projects, utilized and percent attributable to new development.
 - Project cost attributable to new development.

Based on data compiled into the CIP database, an updated maximum cost per service unit will be calculated for service areas within the Town.

- D5. Update of Land Use Equivalency Table: The land use equivalency table will be updated/expanded based on Town Staff input. Traffic data will be based on information presented in the Institute of Transportation Engineers, Trip Generation Manual, 11th Edition or available supplemental information of trip type activity. Subject to availability of data, up to five (5) land uses not listed in ITE's Trip Generation will be researched and incorporated. Trip length information will be derived from the latest work place survey compiled by the North Central Texas Council of Governments.

Task 5: Impact Fee Report Development and Meeting Attendance

- E1. Develop Draft Impact Fee Update Report: FNI will prepare and provide one (1) electronic PDF copy of the draft water, wastewater and roadway impact fee update report discussing methodology and impact fee calculations. The report will include mapping showing the existing system and proposed system improvements required to meet projected 10-year growth and maximum allowable water, wastewater, and roadway impact fees.
- E2. Conference Call: FNI will have a conference call with the Town Staff to discuss the report findings, impact fee calculations, and maximum allowable water, wastewater and roadway impact fees for the Town. Following the conference call, FNI will incorporate revisions into the Impact Fee Update Report.
- E3. Impact Fee Process Meetings: Meetings with Town Staff, advisory committee and the Town Council will be held at critical project milestones to present data and obtain project feedback. In addition to meetings with Town Staff, it is anticipated that four (4) meetings will be held throughout the impact fee process and include three (3) advisory committee meetings and one (1) public hearing. FNI will prepare presentations and obtain feedback from Town Staff prior to the meetings.
- E4. Impact Fee Benchmarking: FNI will develop comparison tables of impact fees of the Town with area peer cities for use by the Town in considering collection rates. Town Staff and/or the CIAC will identify up to eight (8) area cities for the comparison. Fee comparisons will be based on land use types of single-family residential, general retail or office, restaurant, etc. Up to five (5) land use types will be compared. FNI will prepare a chart depicting the combined result of wastewater and roadway impact fees for each land use.
- E5. Impact Fee Calculator: FNI will update the automated impact fee calculation form to help Town administrators in the

calculation of assessment and collection rates for specific development applications.

- E6. Finalize Impact Fee Study Report: Based on comments by Town Staff, FNI will finalize and provide one (1) electronic PDF copy and five (5) hardcopies of the final Water, Wastewater and Roadway Impact Fee Study to the Town.

SPECIAL SERVICES

No special services have been identified.

ADDITIONAL SERVICES: Additional Services to be performed by Consultant, if authorized by the Town, which are not included in the above described scope of services, are described as follows:

- A. 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.
- B. 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.
- C. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- D. Preparing Operation and Maintenance Manuals or conducting operator training.
- E. 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).
- F. Performing investigations, studies, and analysis of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- G. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- H. 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.
- I. 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.
- J. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- K. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of Consultant.
- L. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.

- M. Provide follow-up professional services during Contractor's warranty period.
- N. Furnishing the services of a Resident Project Representative to act as the Town's on-site representative during the Construction Phase.
- O. Detailed settlement studies or other engineering issues resulting from soft soil conditions or other unexpected site conditions.
- P. Cathodic control design and construction consisting of field evaluations, engineering analysis and construction services.
- Q. Providing easement acquisition services.

III. DELIVERABLES

Task 1 - Kickoff Meeting, Data Collection & Land Use Assumptions -Documentation of land use assumptions (included in report)

Task 2 - Water and Wastewater System Analysis and CIP Update -One (1) PDF copy of the Water Impact Fee CIP with costs
 -One (1) PDF copy of the Water CIP with costs
 -One (1) PDF copy of the Wastewater Impact Fee CIP with costs
 -One (1) PDF copy of the Wastewater CIP with costs
 -Updated calibrated water and wastewater models

Task 3 - Water and Wastewater Impact Fee Analysis -Documentation of water and wastewater impact fee calculations and maximum allowable fee (included in report)

Task 4 - Roadway Impact Fee Analysis -One (1) PDF copy of the Roadway Impact Fee CIP with costs
 -Documentation of roadway impact fee calculations and maximum allowable fee (included in report)

Task 5 - Impact Fee Report Development and Meeting Attendance -One (1) PDF copy of the draft Water, Wastewater and Roadway Impact Fee Study Report
 -One (1) PDF copy and five (5) hardcopies of the final Water, Wastewater and Roadway Impact Fee Study Report

**EXHIBIT B
COMPENSATION SCHEDULE**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.,
FOR THE WATER, WASTEWATER, AND ROADWAY IMPACT FEE UPDATE PROJECT**

I. COMPENSATION SCHEDULE

Task	Completion Schedule	Compensation Schedule
Notice-to-Proceed	February 2023	
Task 1 - Kickoff Meeting, Data Collection & Land Use Assumptions	May 2023	\$22,900
Task 2 - Water and Wastewater System Analysis and CIP Update	January 2024	\$167,200
Task 3 - Water and Wastewater Impact Fee Analysis	March 2024	\$20,700
Task 4 - Roadway Impact Fee Analysis	March 2024	\$22,700
Task 5 - Impact Fee Report Development and Meeting Attendance	August 2024	\$66,100
Total Compensation		\$299,600

II. COMPENSATION SUMMARY

Basic Services (Lump Sum)	Amount
Task 1 - Kickoff Meeting, Data Collection & Land Use Assumptions	\$22,900
Task 2 - Water and Wastewater System Analysis and CIP Update	\$167,200
Task 3 - Water and Wastewater Impact Fee Analysis	\$20,700
Task 4 - Roadway Impact Fee Analysis	\$22,700
Task 5 - Impact Fee Report Development and Meeting Attendance	\$66,100
Total Basic Services:	\$299,600

Special Services (Hourly Not-to-Exceed)	Amount
None	\$0
Total Special Services:	\$0

Direct Expenses	Amount
None	\$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 Nine Thousand Six Hundred Dollars (\$299,600).

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	86	151
Professional 2	112	176
Professional 3	108	246
Professional 4	170	256
Professional 5	201	360
Professional 6	218	426
Construction Manager 1	107	138
Construction Manager 2	93	177
Construction Manager 3	136	168
Construction Manager 4	160	218
CAD Technician/Designer 1	71	148
CAD Technician/Designer 2	115	172
CAD Technician/Designer 3	151	219
Corporate Project Support 1	59	120
Corporate Project Support 2	77	191
Corporate Project Support 3	121	286
Intern / Coop	51	87

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates			Valve Crew Vehicle (hour)	\$75
	Small Format (per copy)	\$0.10	Pressure Data Logger (each)	\$200
	Large Format (per sq. ft.)		Water Quality Meter (per day)	\$100
<u>Technology Charge</u>	Bond	\$0.25	Microscope (each)	\$150
\$8.50 per hour	Glossy / Mylar	\$0.75	Pressure Recorder (per day)	\$100
	Vinyl / Adhesive	\$1.50	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
			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 2022.

3/6/06/2022

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 D
CONFLICT OF INTEREST AFFIDAVIT**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.,
FOR THE WATER, WASTEWATER, AND ROADWAY IMPACT FEE UPDATE PROJECT**

THE STATE OF TEXAS

§

§

COUNTY OF COLLIN

§

I, Clayton Barnard, a member of the Consultant team, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

- ☐ Ownership of 10% or more of the voting shares of the business entity.
- ☐ Ownership of \$25,000.00 or more of the fair market value of the business entity.
- ☐ Funds received from the business entity exceed 10% of my income for the previous year.
- ☐ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least \$25,000.00.
- ☐ A relative of mine has substantial interest in the business entity or property that would be affected by my decision of the public body of which I am a member.
- ☐ Other: _____
- ☒ None of the Above.

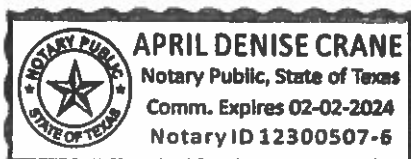
Upon filing this affidavit with the Town of Prosper, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of the public body which took action on the agreement.

Signed this 3rd day of February, 2023.

Clayton Barnard / Principal / Vice President
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared Clayton Barnard and on oath stated that the facts hereinabove stated are true to the best of his / her knowledge or belief.

Sworn to and subscribed before me on this 3rd day of February, 2023.



[Signature]
Notary Public in and for the State of Texas

My Commission expires: 2-2-2024

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(1-2) 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>	<div style="border: 1px solid black; padding: 2px; text-align: center; font-weight: bold;">OFFICE USE ONLY</div> <div style="border: 1px solid black; height: 100px; margin-top: 5px;"></div>	
<p>1 Name of vendor who has a business relationship with local governmental entity.</p> <p style="text-align: center; font-size: 1.5em;">N/A</p>		
<p>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.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <p style="text-align: center; font-size: 1.5em;">N/A</p> <p style="text-align: center; font-size: 0.8em;">Name of Officer</p>		
<p>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.</p> <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> <p style="text-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 style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p> </div>		
<p>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.</p>		
<p>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).</p>		
<p>7</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 45%;"> <p style="font-size: 1.2em; font-family: cursive;">Clayton Charnoud</p> <p style="font-size: 0.8em;">Signature of vendor doing business with the governmental entity</p> </div> <div style="width: 45%; text-align: right;"> <p style="font-size: 1.2em;">2-3-2023</p> <p style="font-size: 0.8em;">Date</p> </div> </div>		