

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.
FOR THE FM 1461 12-INCH WATER LINE RELOCATION PROJECT (2114-WA)**

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

WITNESSETH:

WHEREAS, Town desires to obtain professional engineering services in connection with the FM 1461 12-inch Water Line Relocation **Project (2114-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 Ninety-Nine Thousand Nine Hundred Dollars (\$399,900) 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
5805 Main Street, Suite B
Frisco, TX 75034
clayton.barnard@freese.com

Town of Prosper
Harlan Jefferson, Town Manager
PO Box 307
Prosper, TX 75078
hjefferson@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. **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

Harlan Jefferson
Printed Name

Principal/Vice President
Title

Town Manager
Title

July 8, 2022
Date

Date

**EXHIBIT A
SCOPE OF SERVICES**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.
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I. PROJECT DESCRIPTION

The widening of Frontier Parkway (FM 1461) is currently under design between Preston Road (SH 289) to Custer Road (FM 2478). The Town has an existing 12-inch water line adjacent and outside of existing right-of-way, approximately 15,700 linear feet. Most of the water line is located within Town of Prosper easements. The proposed roadway will be over or near the existing water line for most of the project. This project will relocate the existing water line to avoid conflict with the proposed roadway. Where feasible the water line will be relocated outside the proposed right-of-way within new easements. If a new easement is not feasible the water line will be located within TxDOT right-of-way.

The project will require TxDOT coordination, a conceptual design that determines the alignment and easement needs of the project and final design that will include both preliminary and final design submittals. The project will continue through bid and construction phase services. This scope of services is based upon the preparation of one set of construction contract documents (plans and specifications) for the project.

II. TASK SUMMARY
BASIC SERVICES

- A. GENERAL & PROJECT MANAGEMENT - Consultant shall provide project management services for the project. The following services shall be provided.
1. Manage and coordinate the efforts of all involved in the project, including internal design team, the sub-consultants, the Town Staff, and the franchise utilities. Provide oversight of the schedule during the survey, land acquisition, and engineering process, to attempt to maintain the Town's desired schedule.
 2. Prepare monthly reporting including status report, recent activities, upcoming activities, schedule updates and scope changes. Prepare monthly invoices.
 3. Coordination with the franchise utilities that are impacted by the proposed improvements.
- B. TASK 1 – CONCEPTUAL DESIGN
1. Conduct one (1) meeting with Town to confirm the goals, schedule, and deliverables for the project.
 2. Obtain and review all available data for the proposed water line route and existing water line route and easements.
 3. Prepare letters of permission for access to private properties for surveying. These letters are to be put on the Town of Prosper letterhead and sent to the appropriate landowners.
 4. Develop an alignment for the proposed water line. Route will be selected to avoid or minimize impacts

to areas that may cause schedule delays or higher costs due to environmental, permitting, easement or engineering issues.

5. Conduct field review, with representatives of the Town, of the project corridor to ensure avoidance or minimization of environmental, permitting, and engineering issues and determine presence of any additional constraints.
 6. Attend Town's Utility coordination meeting to coordination with franchise utilities that are impacted by the proposed improvements. Incorporate any proposed utility relocations into the water line plans.
 7. Prepare a conceptual layout consisting of a horizontal roll plot illustrating the proposed alignment of the 12-inch Water Line. A pdf file of the roll plot will be submitted to the Town for review. The roll plot will utilize information provided by TxDOT, franchise utilities and topographical design survey. Survey to be completed in accordance with the Special Services.
 8. Submit the Engineer's probable cost opinion for the recommended water line alignment and recommendations.
 9. Meet with the Town of Prosper to review the recommended alignment. Update the roll plot water line alignment based on Town comments and incorporate a proposed profile for Town review.
- C. TASK 2 – FINAL DESIGN – Upon approval of the Conceptual Design, CONSULTANT will proceed toward Final Design as follows.
1. CONSULTANT will prepare a 60% design submittal using available TxDOT, Franchise Utility, Survey, and SUE data. The submittal will include electronic set of half size (11"x17") construction drawings, updated schedules and updated opinion of probable construction cost. These items will be submitted to the Town at the 60% submittal date. In addition, the submittals will include electronic copies of the construction drawings in pdf format. Typical sheets used in the project will be:
 - a. Cover Sheet
 - b. General Notes
 - c. Project layout control
 - d. Plan and Profile sheets
 - e. Details
 2. Prepare a table of contents for anticipated technical specification sections.
 3. Update the opinion of probable construction costs developed during the Preliminary Design Phase based on new information obtained during the 60% Design Phase.
 4. Upon receipt of the Town's comments on the 60% submittals, one (1) review meeting will be held to discuss the review comments and recommendations based on the 60% plans.
 5. Once the 60% comments have been received from the Town, CONSULTANT will prepare 90% documents. The submittal will include electronic set of half size (11"x17") construction drawings, technical specifications, bid proposal, updated schedule and updated opinion of probable construction cost. In addition, the submittals will include electronic copies of the construction drawings in pdf format.

6. Upon receipt of the Town's comments on the 90% submittal, one (1) review meeting will be held to discuss the review comments and recommendations based on the 90% plans.
 7. Once the 90% comments have been received from the Town, CONSULTANT will prepare 100% documents. The submittals will include electronic set of half size (11"x17") construction drawings, technical specifications, bid proposal, updated schedule and updated opinion of probable construction cost. In addition, the submittal will include electronic copies of the construction drawings in pdf format.
 8. Upon receipt of the Town's comments on the 100% submittal, one (1) review meeting will be held to discuss the review comments and recommendations based on the 100% plans.
 9. Once the 100% comments have been received from the Town, CONSULTANT will prepare "final" documents. Provide "final" plans, specifications, and bid proposals for construction contracts to complete this project and in accordance with the Town's bidding procedures. Updated electronic set of half size (11"x17") construction drawings, technical specifications, bid proposal and opinion of probable construction costs will be provide to the OWNER during the bidding process. In addition, the submittal will include electronic copies of the construction drawings in pdf and dwg format.
- D. TASK 3 - BID PHASE - Upon completion of the design services and approval of "Final" drawings and specifications by Town, Consultant will proceed with the performance of services in this phase as follows:
1. Assist Town by responding to questions and interpreting bid documents. Assist in issuing addenda to the bid documents to plan holders if necessary.
 2. Attend a pre-bid conference for the construction project and coordinate responses with Town. Response to the pre-bid conference will be in the form of addenda issued after the conference, if necessary.
 3. Assist Town in the preparation of Construction Contract Documents for construction contracts.
- E. TASK 4 - CONSTRUCTION PHASE - Upon completion of the bid phase services, Consultant will proceed with the performance of construction phase services as described below. Consultant will endeavor to protect the Town in providing these services. However, it is understood that Consultant does not guarantee the Contractor's performance, nor is Consultant responsible for supervision of the Contractor's operation and employees. Consultant shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. Consultant shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.
1. Assist Town in conducting pre-construction conference with the Contractor.
 2. Interpret the drawings and specifications for the Town and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by the Town, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an Additional Service.
 3. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Consultant shall provide electronic files in PDF and a DWG copy of the Record Drawings to the Town in accordance with the Town's spatial submission requirements.

SPECIAL SERVICES

A. TASK 5 - TxDOT COORDINATION:

1. Participate in informal meetings with Town of Prosper and TxDOT throughout the design phase to review progress and exchange ideas and information. Eight (8) meetings are included within this scope.
2. For Utility Installation Request (UIR):
 - a. Prepare the TxDOT initial Utility Installation Request package. Provide Town with TxDOT submittal plans.
 - b. Prepare one (1) "Final" SEALED set of documents to TxDOT that will be used for the utility authorization permit needed for construction within TxDOT right of way (different set of plans from the reimbursement package).
3. For the Standard Utility Agreement (Reimbursement Package):
 - a. Prepare the TxDOT initial reimbursement package including one (1) color coded set of drawings per TxDOT requirements.
 - b. Upon receipt of TxDOT comments on the initial reimbursement package, one (1) review meeting with TxDOT will be held to discuss review comments and recommendations based on the initial reimbursement package.
 - c. Once comments on initial reimburse package comments have been received from TxDOT, prepare the TxDOT final reimbursement package including one (1) "Final" SEALED drawings for the reimbursable package submittal to TxDOT, which will be color coded per TxDOT requirements.
4. Any additional submittals to TxDOT for the reimbursement package or the utility permit will be performed as an Additional Service. Any permit or application fees will be the responsibility of the OWNER.

B. TASK 6 – EASEMENT RESEARCH - Upon written notice to proceed, CONSULTANT shall retain (as a subconsultant) and monitor the services of a surveying firm to perform surveying services for the project. The following services shall be provided:

1. Research properties and obtain copies of the existing Town of Prosper easements within the project area.
2. Provide digital copies of the existing easements and written Abstractor Certificate to confirm that all easements of record have been searched on each property (36 properties).

C. TASK 7 – BOUNDARY SURVEY - Upon written notice to proceed, CONSULTANT shall retain (as a subconsultant) and monitor the services of a surveying firm to perform surveying services for the project. The following services shall be provided.

1. Research current property owners and obtain copies of subdivision plats and ownership deed within the project area.

2. Locate existing property corners and right-of-way corners to establish property lines, existing and proposed FM 1461 rights-of-way and easement lines.
 3. Update TxDOT boundary files to address new deeds, plats and property owners from the time the TxDOT project was surveyed.
 4. Provide a digital property map in AutoCAD format showing property lines, rights-of-way lines, easements and ownership with recording information, digital copies in pdf format of plats and ownership deeds, an ASCII point file, and a written Abstractor Certificate to confirm that all documents of record have been searched on each property (36 properties).
- D. TASK 8 - TOPOGRAPHICAL SURVEY - Upon written notice to proceed, Consultant shall retain (as a subconsultant) and monitor the services of a surveying firm to perform surveying services for the project. The following survey shall be provided.
1. Establish project control using Global Positioning System (GPS) methodology. Horizontal values will be based on the Texas State Plane Coordinate System, North American Datum of 1983, North Central Zone (4202) and scaled to surface using the Texas Department of Transportation grid to surface factor for Collin County (1.000152710). the vertical values will be based on GPS derived ellipsoid heights and adjusted to North American Vertical Datum of 1988 (NAVD88) elevations using Geoid 12B. Control Points will also be tied into the Town of Prosper Geodetic Control Network.
 2. Gather topographical survey from the south edge of pavement of FM 1461 to 20 feet past the proposed TxDOT right-of-way line, from the centerline of Preston Road (SH 289) to the centerline of Custer Road (FM 2478), to include pavement edges, curb and gutter, buildings driveways, culverts, fences and gates, signs, mailboxes, tops and toes of slopes, spot elevations, trees six (6) inches and greater, surface locations of utilities and flowline elevations of sanitary and storm sewer manholes where accessible, and other surface features.
 3. Request Texas 811 Ticket and mark utilities as marked by others.
 4. Coordinate with the Town of Prosper to have Town utilities marked and survey the location of the Town utilities.
 5. Provide a digital design survey drawing in AutoCAD format showing visible surface features located, an ASCII point file and a copy of field notes and field sketches.
- E. TASK 9 - EASEMENT DOCUMENTS: – Upon written notice to proceed, Consultant shall retain (as a subconsultant) and monitor the services of a surveying firm to perform easement document services for the project. The following shall be provided.
1. Prepare up to twelve (12) parcel exhibits with legal descriptions for easements, signed and sealed by a Registered Professional Land Surveyor.
- F. TASK 10 - SUBSURFACE UTILITY ENGINEERING (SUE): - Consultant shall retain (as a subconsultant) and monitor subsurface utility engineering (SUE) services. SUE work required for this project in general accordance with the recommended practices and procedures described in ASCE Publication C/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data).

1. As described in the mentioned ASCE publication, four levels have been established to describe the quality of utility location and attribute information used on plans. The four quality levels are as follows:
 - a. Quality Level D (QL "D") – Information derived from existing records.
 - b. Quality Level C (QL "C") – QL "D" information supplemented with information obtained by surveying visible above-ground utility features (i.e. valves, hydrants, meters, manhole covers, etc.).
 - c. Quality Level B (QL "B") – Two-dimensional (x, y) information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as "designating" this quality level provides the horizontal position of subsurface utilities within approximately one foot.
 - d. Quality Level A (QL "A") – Also known as "locating", this quality level provides precise three-dimensional (x, y, z) information at critical locations by exposing specific utilities. Non-destructive vacuum excavation equipment is used to expose the utilities at specific points which are then tied down by survey.
2. For this project, QL's "B" and "A" SUE, as previously defined, will be provided. The QL "B" will be within the areas of Preston Road (SH 289), Coit Road, and Custer Road (FM 2478) rights-of ways.
3. The QL "A" will consist of up to eight (8) test holes, along the proposed water line alignment.
4. Consultant and Sub-consultant will attempt to place the test holes outside the paved areas wherever possible. However, some test holes may need to be placed in paved areas that may require traffic control measures to be implemented. Sub-consultant will establish routine/ordinary traffic control (cones and free-standing signage, etc.) whenever required as part of this scope. If non-routine traffic control measures are required (barricades, flag person, changeable message board, etc.) these services will be additional to the contract.

G. TASK 11 - ENVIRONMENTAL SERVICES: – Consultant will render the following professional environmental services in connection with the project.

Compile existing information and conduct site visit

1. Prior to making a field visit, obtain information for the vicinity such as soils maps, National Wetland Inventory maps, topographic maps, floodplain maps, and other readily available, pertinent data. This information will be evaluated to guide the field survey described below. Consultant's scientists will conduct a pedestrian survey of the route to identify environmental issues. This investigation will include the following:
 - i. Identification of "waters of the U.S." as defined by U.S. Army Corps Engineers' regulations. These waters of the U.S. are regulated by the USACE and require a permit for activities conducted within the jurisdictional boundaries. The presence of jurisdictional waters such as ephemeral, intermittent, or perennial streams; wetlands; or other open waters will be documented. This scope does not include a full wetland delineation.
 - ii. The presence of potential habitat for any federally listed threatened or endangered species

will be determined.

- iii. Readily observable evidence of any obvious environmental contamination such as stained soils, sheens on water, etc. will be noted.

Section 404 Permitting

1. Consultant will prepare a technical memorandum that will include a description of field observations described above; an opinion of whether or not jurisdictional waters are present, and if so, the type(s) of waters; an estimate of the area of impact to waters of the U.S.; and a discussion of potential USACE 404 permit options.
2. This scope assumes that the proposed pipeline can be designed and located to meet the terms and conditions of Nationwide Permit (NWP) 58, *Water and Other Substances*, without requiring the submittal of a pre-construction notification (PCN) to the USACE. In the event a PCN is required, consultant can prepare PCN as an additional service.
3. All permit conditions and requirements will be included in the construction contract documents, and the construction contractor will be required to abide by these during construction.
4. Projects sponsored by public entities that affect a cumulative area greater than five acres or that disturb more than 5,000 cubic yards require advance consultation with the Texas Historical Commission (THC) according to Section 191.0525 (d) of the Antiquities Code of Texas. Because the proposed project is expected to exceed these thresholds, coordination with THC will be required. CONSULTANT will prepare a letter to the THC describing the project and requesting their review. In the event that the THC requires an archeological survey, with the Town's approval, CONSULTANT will retain and coordinate the services of a qualified professional archeologist to obtain the required Texas Antiquities Permit, perform the survey, and prepare a survey report as an additional service.
5. Consultant will coordinate with the Project Team (Client and Design Team) to attend the kickoff meeting, discuss the findings of the site visit, potential ways to avoid PCN triggers, and comments to the draft technical memorandum.

Section 404 Mitigation Plan

1. Consultant assumes that mitigation plan services will not be required since no PCN is required. If these are required, they will be considered additional services, and will be negotiated between Consultant and the Town if requested by the Town.

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. Field layouts or the furnishing of construction line and grade surveys.
- B. Mitigation planning required by the USACOE 404 permit.
- C. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction and providing services as may be required in connection with the replacement of such Work.

- D. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by the Town.
- E. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- F. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- G. Preparing Operation and Maintenance Manuals or conducting operator training.
- H. 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).
- I. Performing investigations, studies, and analysis of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- J. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- K. 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.
- L. Services required to resolve bid protests or to rebid the projects for any reason.
- M. 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.
- N. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- O. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of Consultant.
- P. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- Q. Provide follow-up professional services during Contractor's warranty period.
- R. Furnishing the services of a Resident Project Representative to act as the Town's on-site representative during the Construction Phase.
- S. Detailed settlement studies or other engineering issues resulting from soft soil conditions or other unexpected site conditions.

- T. Cathodic control design and construction consisting of field evaluations, engineering analysis and construction services.
- U. Providing easement acquisition services.

III. DELIVERABLES

Task 1 & 2 – Conceptual & Final Design	Provide Conceptual and Final design plans and specifications for the 12-inch water line along Frontier Parkway (FM 1461).
Task 3 – Bid Phase	Assist the Town in securing bids and issuing construction plans and specifications for the design of the project.
Task 4 – Construction Phase	Provide limited general construction representative services throughout the construction of the project. Provide PDF and DWG Record Drawings.
Task 5 – TxDOT Coordination	Prepare two (2) separate drawings to be submitted to TxDOT for their review: One set of plans will be used for a reimbursement submittal and the other set will be a Utility Installation Request
Task 6 – Easement Research	Provide all Plats and Easement Documents dedicated to the Town within the proposed TxDOT ROW to be included in TxDOT reimbursement package.
Task 7 – Boundary Survey	Confirm TxDOT Boundary Survey is accurate and complete and prepare written Easements where necessary.
Task 8 – Topographical Survey	AutoCAD file with horizontal and vertical control points, property lines, existing easements, existing utilities and 1-foot contours.
Task 9 – Easement Documents	Exhibits and legal descriptions for the proposed permanent and temporary easements for the pipeline.
Task 10 – Subsurface Utility Engineering (SUE)	AutoCAD file with horizontal locations of Level B locations and vertical elevation of Level A locations.
Task 11 – Environmental Services	Technical memorandum documenting the conclusions and recommendations of the environmental permitting evaluation.

**EXHIBIT B
COMPENSATION SCHEDULE**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.
FOR THE FM 1461 12-INCH WATER LINE RELOCATION PROJECT (2114-WA)**

I. COMPENSATION SCHEDULE

Task	Completion Schedule	Compensation Schedule
Notice-to-Proceed	August 2022	
Task 1 - Conceptual Design	November 2022	\$48,700
Task 2 - Final Design	May 2023	\$127,850
Task 3 - Bid Phase	July 2023	\$7,750
Task 4 - Construction Phase	June 2025	\$16,900
Task 5 - TxDOT Coordination	May 2023	\$31,550
Task 6 - Easement Research	September 2022	\$8,850
Task 7 - Boundary Survey	October 2022	\$23,300
Task 8 - Topographical Survey	October 2022	\$81,400
Task 9 - Easement Documents	February 2023	\$12,000
Task 10 - Subsurface Utility Engineering (SUE)	February 2023	\$28,250
Task 11 - Environmental Services	February 2023	\$13,350
Total Compensation		\$399,900

II. COMPENSATION SUMMARY

Basic Services (Lump Sum)	Amount
Task 1 - Conceptual Design	\$48,700
Task 2 - Final Design	\$127,850
Task 3 - Bid Phase	\$7,750
Task 4 - Construction Phase	\$16,900
Total Basic Services:	\$201,200

Special Services (Hourly Not-to-Exceed)	Amount
Task 5 - TxDOT Coordination	\$31,550
Task 6 - Easement Research	\$8,850
Task 7 - Boundary Survey	\$23,300
Task 8 - Topographical Survey	\$81,400
Task 9 - Easement Documents	\$12,000
Task 10 - Subsurface Utility Engineering (SUE)	\$28,250
Task 11 - Environmental Services	\$13,350
Total Special Services:	\$198,700

Direct Expenses	Amount
None	\$0
Total Direct Expenses:	\$0

EXHIBIT B COMPENSATION/PRICING SCHEDULE

COMPENSATION

ATTACHMENT CO

Compensation to FNI for Basic Services in Attachment SC shall be the lump sum of Two Hundred One Thousand Two Hundred Dollars (\$201,200).

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 One Hundred Ninety Eight Thousand Seven Hundred Dollars (\$198,700).

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>
Professional 1	134
Professional 2	161
Professional 3	184
Professional 4	210
Professional 5	246
Professional 6	281
Construction Manager 1	107
Construction Manager 2	139
Construction Manager 3	164
Construction Manager 4	203
CAD Technician/Designer 1	113
CAD Technician/Designer 2	148
CAD Technician/Designer 3	180
Corporate Project Support 1	109
Corporate Project Support 2	131
Corporate Project Support 3	174
Intern / Coop	66
Senior Advisor	175

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

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.15. For Resident Representative services performed by non-FNI employees and CAD services performed in-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated 2021.

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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

**EXHIBIT E
CONFLICT OF INTEREST QUESTIONNAIRE**

<p align="center">CONFLICT OF INTEREST QUESTIONNAIRE</p> <p align="center">For vendor doing business with local governmental entity</p>	<p align="right">FORM CIQ</p>
<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>	<p>OFFICE USE ONLY</p>
<p>1 Name of vendor who has a business relationship with local governmental entity.</p>	<p>Date Received</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 align="center">_____</p> <p align="center">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> <p>A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p align="center"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p align="center"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>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> <p align="center">_____ Signature of vendor doing business with the governmental entity</p> <p align="right">_____ Date</p>	