

**PROFESSIONAL SERVICES AGREEMENT**

STATE OF TEXAS §

COUNTY OF TARRANT §

This Agreement is entered into by City of Stephenville, Texas, hereinafter called "Client" and Freese and Nichols, Inc., hereinafter called "FNI." In consideration of the Agreements herein, the parties agree as follows:

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement, Client agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as North Bosque River Watershed FIF Study.
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with Project as set forth in Attachment SC – Scope of Services and Responsibilities of Client which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Client agrees to pay FNI for all professional services rendered under this Agreement for time and materials in accordance with Attachment CO – Compensation and Attachment COT – Task and Expense Budget, which are attached and made a part of this Agreement. FNI shall perform professional services as outlined in the "Scope of Services" for a not to exceed fee of Four Hundred Fifty Thousand Dollars, \$450,000.00.

If FNI's services are delayed or suspended by Client, or if FNI's services are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement as set forth as Attachment TC – Terms and Conditions of Agreement shall govern the relationship between the Client and FNI.

All work performed on this contract shall be in conformance with the TWDB contract with the CLIENT and the required terms as documented in Attachment TWDB.


Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and FNI, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and FNI and not for the benefit of any other party.

This Agreement constitutes the entire Agreement between Client and FNI and supersedes all prior written or oral understandings.

This contract is executed in two counterparts. IN TESTIMONY HEREOF, Agreement executed:

**Freese and Nichols, Inc.**

**City of Stephenville, Texas**

By:   
06/01/2021 9:04:43 AM

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

**Scott Hubley, Vice-President**

\_\_\_\_\_  
Print Name and Title

Print Name and Title

Date: 6/1/21

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

## **ATTACHMENT SC - SCOPE OF SERVICES**

### **North Bosque River Watershed FIF Study**

#### **City of Stephenville, Texas**

**PROJECT UNDERSTANDING:** The City of Stephenville has been awarded a grant under the newly created Texas Flood Infrastructure Fund (FIF) to develop a watershed study of the Green Creek-North Bosque River Watershed (Hydrologic Unit Code 1206020401), also referred to as the North Bosque River Watershed. The FIF is managed by the Texas Water Development Board (TWDB) and it was created to assist in the financing of drainage, flood mitigation and flood control projects. The watershed study will include the development of hydrologic and hydraulic models that will serve as planning tools to define flood hazard risks for private properties and public infrastructure. The models will also provide a platform for developing and evaluating improvement alternatives. A dam safety assessment of NRCS dam structures will also be performed and include visual condition assessments and breach analyses.

#### **Task 1: Project Management and Meetings**

- A. General project management and communications with the City and partner entities.
- B. Project kickoff meeting with City staff and partner entities staff.
- C. Monthly status reports.
- D. Up to six (6) meetings including a project kickoff and data collection meeting, hydrology review meeting, hydraulics review meeting, alternatives review meeting, dam assessment meeting, and final report review meeting.

#### **Task 2: Public Outreach**

- A. Participate in a public meeting organized by the City to introduce the study to the public.
- B. Development of a web survey to collect resident feedback on known drainage issues within the watershed. The web survey will be posted on the City's website and promoted via social media platforms by the City.
- C. Prepare for and facilitate one (1) public meeting during the project to communicate with the public. The public meeting will be held after completion of the flood hazard analysis task to present the watershed study results.

#### **Task 3: Data Collection**

- A. GIS data: topographic maps, LiDAR, zoning maps, storm drain system mapping, roadways, property lines, buildings, future land use maps, aerial imagery.
- B. Previous plans and studies from partnering entities and other related authorities.
- C. Existing hydrologic and hydraulic models.
- D. Dam and reservoir original design plans from local sponsor.
- E. Conduct up to (1) site visit to verify and document initial conditions.
- F. System inventory of streams and County roadways.
- G. Field Survey will be collected at bridge/culvert crossings and at intermittent creek cross sections to supplement and ground truth the LIDAR. At each crossing, survey will be collected for the hydraulic openings, railings, curbs, centerlines, and all other points necessary to adequately model the bridge or culvert. In addition, each crossing survey includes cross sections upstream of the crossing. Cross sections to be surveyed will include the channel geometry for 20 feet on either side of the banks. The remainder of the section will be supplemented with LIDAR as

needed. The location of cross sections and crossings to be surveyed is not defined. The location of all survey to be collected will be verified with the City prior to commencing work. The budget includes approximately 28 bridge/culvert crossings and 32 cross sections.

#### **Task 4. Screening Assessment**

- A. Development of a two-dimensional (2D) hydraulic model to perform high-level planning and analysis for the entirety of the Green Creek-North Bosque River Watershed (Hydrologic Unit Code 1206020401).
- B. Perform “Rain-on-Mesh” analysis to define overland flow paths and identify flooding areas within and outside of the floodplain. Flow hydrographs will be developed for standard design storms including the 2, 5, 10, 25, 50, and 100-year events (24-hr duration) for existing and ultimate development conditions.
- C. Evaluate flooded structures and roadways within the watershed to identify flooding hotspot locations.

#### **Task 5. Flood Risk Analysis**

The purpose of this task is to develop detailed hydrologic and hydraulic modeling for approximately 26 miles of North Bosque River and Tributaries as shown in Figure 1. These streams have been selected for detailed study due to their proximity to existing developments. The models will be developed in a format suitable for future submission to FEMA as a Letter of Map Revision (LOMR), but the preparation of a LOMR and associated FEMA coordination is beyond the scope of this study.

- A. Detailed Hydrologic Analysis
  - 1) Delineate watersheds and sub-watersheds for the study area. Approximately 100 square miles of area upstream of the detailed study area will need to be evaluated. This upstream area will be evaluated at a lower resolution (approximately 30 sub-catchment areas). The 12 square miles of area located within the detailed study area will be evaluated at a higher resolution and contain approximately 40 sub-catchment areas.
  - 2) Define model input parameters for the study area.
  - 3) Create both existing and fully-developed land use hydrologic models in HEC-HMS for the study area based on the Soil Conservation Service (SCS) unit hydrograph method.
  - 4) Determine the existing and fully-developed discharges for the study area for the 2-, 5-, 10-, 25-, 50-, 100-, and 500-year storm events.
  - 5) Calculate basin routing parameters using the Modified Puls (where hydraulic models are available) or Muskingum Cunge method.
- B. Detailed Hydraulic Analysis
  - 1) Develop new steady-state HEC-RAS hydraulic models.
  - 2) Update channel and pond routings in hydrologic modeling.
  - 3) Determine the existing and fully-developed water surface elevations for the streams within the study area for the 2-, 5-, 10-, 25-, 50-, 100-, and 500-year storm events.
  - 4) Develop the existing and fully-developed conditions 100-year floodplains within the stream study limits.
  - 5) Identify flood prone areas and document existing and fully-developed structure overtopping (road crossings) and flooding potential (structures).

### **Task 6. Critical Flood Hazard Alternatives Analysis**

- A. Utilize staff input and results from Task 4 and 5 to identify up to five (5) critical flood hazard areas within the Green Creek-North Bosque River Watershed (Hydrologic Unit Code 1206020401).
- B. If necessary, refine hydrologic and hydraulic analyses to achieve greater level of detail for critical flood areas identified in Task 3. It is assumed that additional analysis will be required for up to two (2) areas.
- C. Develop up to two (2) conceptual level alternatives to resolve identified structure and roadway crossing flooding at up to five (5) critical flood areas.
- D. Develop corresponding exhibits depicting the concept and resulting reduction in flooding risks.
- E. Develop alternatives with the goal of minimizing flood risk considering economic constraints. Achieving a 100-year level of protection may not be economically feasible for all locations.
- F. Prepare planning level opinion of probable construction cost (OPCC) for each alternative in 2021 dollars.
- G. Score and rank each project.
- H. Identify potential funding sources to fund the improvements for high-ranking projects.

### **Task 7. Dam Safety Assessment**

FNI will perform a Dam Safety Assessment for up to ten (10) dams within the North Bosque River Watershed. The Dam Safety Assessment will consist of the following tasks:

- 1) Data Collection
  - a. Original Natural Resources Conservation Service (NRCS) watershed workplans and supplements.
  - b. Original design plans (i.e. as-builts).
  - c. Repair or modification design plans.
  - d. Inspection reports.
  - e. NRCS dam assessment reports, breach analyses and/or emergency action plans.
  - f. Texas Commission on Environmental Quality (TCEQ) dam inventory data.
- 2) Site Visits
  - a. Perform site visits to visually assess dam conditions and current status of operation and maintenance (O&M) activities. All site visits will include walking the dam. The site visits will not include assessing the interior of principal spillway intake structures or conduits.
  - b. Develop condition worksheet to record inspection findings, including representative photographs. The condition worksheets will be acceptable for this project and will not be required for submission to TCEQ or NRCS.
- 3) Dam Breach Analysis
  - a. Develop dam breach analysis in HEC-RAS to evaluate a single breach scenario, as defined by NRCS TR-60 and TR-66. This scenario assumes the reservoir is full to the top of dam elevation and no other flows are occurring. No hydrologic modeling is included with this task.
  - b. Develop breach inundation maps, which will be formatted for inclusion in an Emergency Action Plan, to be prepared by others.
  - c. Develop estimates of population at risk (PAR) within the breach inundation area.

Standard NRCS worksheets and guidelines will be utilized to calculate PAR.

**Task 8. North Bosque River Watershed Study – Technical Report**

- 1) Prepare Draft Technical Report documenting the findings and recommendations of the watershed study including digital deliverables such as field survey, GIS information, and hydrologic and hydraulic models in accordance with TWDB standards.
- 2) Draft report will be submitted in digital format (.pdf file) for City and TWDB review. Up to one (1) round of revisions to the report will be performed after receiving City and TWDB feedback. Final report will be submitted in digital format (.pdf file) and up to three (3) hard copies will be provided.

**ADDITIONAL SERVICES:** Additional Services to be performed by FNI, if authorized by City, which are not included in the above described basic services, are described as follows:

1. Final design, bid, or construction phase services.
2. Analysis of areas beyond those outlined in the Scope of Basic Services.
3. Analysis of additional alternatives beyond those indicated in the Scope of Basic Services.
4. Additional site visits or meetings in excess of those defined on the Scope of Basic Services.
5. Application for state or federal permitting or an environmental document for NEPA clearance.
6. LOMR, CLOMR or other FEMA coordination.
7. Preparation of funding submittals or grant applications for projects.
8. Providing renderings, model, and mock-ups requested by the City.
9. Making revisions to drawings or other report documents when such revisions are 1) not consistent with approvals or instructions previously given by City or 2) due to other causes not solely within the control of FNI.
10. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by City.
11. Meeting or trips in excess of the number of meetings included in Article I for site visits, coordination meetings, or other activities.
12. Preparing data and reports for assistance to City in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
13. 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.
14. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the City.
15. Providing document revisions in excess of those outlined in Scope of Basic Services.
16. Providing environmental services.

**TIME OF COMPLETION:** FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services within eighteen (18) months of receiving notice to proceed.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this AGREEMENT and in Attachment CO.

**LIQUIDATED DAMAGES:** Failure to meet the timelines for completion of work identified in this agreement will result in liquidated damages of \$50.00 per consecutive calendar day until the work is submitted. Liquidated damages are only applicable to items under the control of FNI and will not be enforced due to circumstances out of the control of FNI.

**TASK AND EXPENSE BUDGETS**TASK BUDGET

<b>TASK</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>
1	PM and Meetings	\$26,890.20
2	Public Outreach	\$22,461.38
3	Data Collection and Survey	\$63,307.42
4	Screening Assessment	\$53,499.36
5	Flood Risk Analysis Hydrology & Hydraulics	\$146,679.44
6	Critical Flood Hazard Alternatives Analysis	\$39,659.82
7	Dam Safety Assessment	\$57,671.68
8	Technical Report	\$39,830.70
<b>TOTAL</b>		<b>\$ 450,000.00</b>

EXPENSE BUDGET

<b>CATEGORY</b>	<b>AMOUNT</b>
Salaries & Wages <sup>1</sup>	\$115,019.13
Fringe <sup>2</sup>	\$74,267.85
Travel <sup>3</sup>	\$694.40
Subcontract Services	\$45,000.00
Equipment	\$0.00
Other Expenses <sup>4</sup>	\$1,738.64
Overhead <sup>5</sup>	\$135,768.59
Profit	\$77,511.39
<b>TOTAL</b>	<b>\$450,000.00</b>

<sup>1</sup> Salaries and Wages is defined as the cost of salaries of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc., for time directly chargeable to this CONTRACT.

<sup>2</sup> Fringe is defined as the cost of social security contributions, unemployment, excise, and payroll taxes, workers' compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation, and holiday pay applicable thereto.

<sup>3</sup> Travel is limited to the maximum amounts authorized for state employees by the General Appropriations Act, Tex. Leg. Regular Session, 2017, Article IX, Part 5, as amended or superseded

<sup>4</sup> Other Expenses is defined to include expendable supplies, communications, reproduction, postage, and costs of public meetings directly chargeable to this CONTRACT.

<sup>5</sup> Overhead is defined as the costs incurred in maintaining a place of business and performing professional services similar to those specified in this CONTRACT



**COMPENSATION**

Compensation to FNI for Basic Services in Attachment SC shall be computed on the basis of the following Schedule of Charges, but shall not exceed Four Hundred Fifty Thousand Dollars (\$450,000).

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	81	151
Professional 2	102	158
Professional 3	123	228
Professional 4	154	245
Professional 5	186	350
Professional 6	200	399
Construction Manager 1	91	179
Construction Manager 2	109	193
Construction Manager 3	168	224
Construction Manager 4	207	291
CAD Technician/Designer 1	74	147
CAD Technician/Designer 2	105	161
CAD Technician/Designer 3	133	210
Corporate Project Support 1	53	126
Corporate Project Support 2	74	175
Corporate Project Support 3	105	266
Intern / Coop	42	109

**Rates for In-House Services and Equipment**

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates		<u>B&amp;W</u>	<u>Color</u>	Valve Crew Vehicle (hour) \$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each) \$200
	Large Format (per sq. ft.)			Water Quality Meter (per day) \$100
<u>Technology Charge</u>	Bond	\$0.25	\$0.75	Microscope (each) \$150
\$8.50 per hour	Glossy / Mylar	\$0.75	\$1.25	Pressure Recorder (per day) \$100
	Vinyl / Adhesive	\$1.50	\$2.00	Ultrasonic Thickness Guage (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 1.10. 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 1.10. 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 February 2021.**

## TWDB REQUIRED TERMS OF CONTRACT

FNI agrees and acknowledges that it is subject to all applicable requirements of the master contract between City of Stephenville and the Texas Water Development Board. FNI adopts by reference the requirements of Article VII of the TWDB Contract for this subcontract.

### **State Auditor**

By executing this Contract, the SUBCONTRACTOR (Freese and Nichols, Inc.) accepts the authority of the State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this contract. The SUBCONTRACTOR shall comply with and cooperate in any such investigation or audit. The SUBCONTRACTOR agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The SUBCONTRACTOR also agrees to include a provision in any subcontract related to this contract that requires the SUBCONTRACTOR to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract.

### **Financial Records**

The SUBCONTRACTOR (S) and its contracted parties shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by the EXECUTIVE ADMINISTRATOR of the TWDB. Accounting by the SUBCONTRACTOR (S) and its contracted parties shall be in a manner consistent with generally accepted accounting principles.

### **OWNERSHIP**

The TWDB shall have unlimited rights to technical or other data resulting directly from the performance of services under this CONTRACT. It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this CONTRACT and developed by the SUBCONTRACTOR (S) or its contracted parties pursuant to this CONTRACT shall become the joint property of the SUBCONTRACTOR (S) and the TWDB. These materials shall not be copyrighted or patented by the SUBCONTRACTOR (S) or by any consultants involved in this CONTRACT unless the EXECUTIVE ADMINISTRATOR of the TWDB approves in writing the right to establish copyright or patent; provided, however, that copyrighting or patenting by the SUBCONTRACTOR (S) or its SUB-SUBCONTRACTORS will in no way limit the TWDB 's access to or right to request and receive or distribute data and information obtained or developed pursuant to this CONTRACT. Any material subject to a TWDB copyright and produced by the SUBCONTRACTOR (S) or TWDB pursuant to this CONTRACT may be printed by the SUBCONTRACTOR (S) or the TWDB at their own cost and distributed by either at their discretion. The SUBCONTRACTOR (S) may otherwise utilize such material provided under this CONTRACT as it deems necessary and appropriate, including the right to publish and distribute the materials or any parts thereof under its own name, provided that any TWDB copyright is appropriately noted on the printed materials.

The SUBCONTRACTOR (S) and its contracted parties agree to acknowledge the TWDB in any news releases or other publications relating to the work performed under this CONTRACT.

**No Debt Against the State**

This SUBCONTRACT and Agreement shall not be construed as creating any debt by or on behalf of the State of Texas and the TWDB, and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this SUBCONTRACT transcends the biennium in which this SUBCONTRACT is entered into, this SUBCONTRACT is specifically contingent upon the continued authority of the TWDB and appropriations therefore.

**Licenses, Permit and Insurance**

For the purpose of this CONTRACT, the SUBCONTRACTOR (S) will be considered an independent SUBCONTRACTOR and therefore solely responsible for liability resulting from negligent acts or omissions. The SUBCONTRACTOR (S) shall obtain all necessary insurance, in the judgment of the SUBCONTRACTOR (S), to protect themselves, the CONTRACTOR, the TWDB, and employees and officials of the TWDB from liability arising out of this CONTRACT. The SUBCONTRACTOR (S) shall indemnify and hold the TWDB and the State of Texas harmless, to the extent the SUBCONTRACTOR (S) may do so in accordance with state law, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the SUBCONTRACTOR (S), arising out of the activities under this CONTRACT.

The SUBCONTRACTOR (S) shall be solely and entirely responsible for procuring all appropriate licenses and permits, which may be required by any competent authority for the SUBCONTRACTOR (S) to perform the subject work.

**TERMS AND CONDITIONS OF AGREEMENT**

1. **DEFINITIONS:** The term City as used herein refers to the City of Stephenville. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents; also its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by Freese and Nichols pursuant to the Agreement.
2. **CHANGES:** City, without invalidating the Agreement, may order changes within the general scope of the Work required by the Agreement by altering, adding to and/or deducting from the Work to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, or the time required for, the performance of any part of the Services under the Agreement, an equitable adjustment will be made by mutual agreement and the Agreement modified in writing accordingly.
3. **TERMINATION:** The obligation to provide services under this Agreement may be terminated by either party upon ten days' written notice. In the event of termination, FNI will be paid for all services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.
4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
5. **INFORMATION FURNISHED BY CITY:** City will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications or other information furnished by City and City agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs and expenses arising therefrom. FNI shall disclose to City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.
6. **INSURANCE:** FNI shall provide to City certificates of insurance which shall contain the following minimum coverage:

<b>Commercial General Liability</b>	<b>Workers' Compensation</b>
General Aggregate	Per State Statute
\$2,000,000	
<b>Automobile Liability (Any Auto)</b>	<b>Professional Liability</b>
CSL	\$3,000,000 Annual Aggregate
\$1,000,000	

7. **SUBCONTRACTS:** If, for any reason, at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City will notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Agreement shall create any contractual relation between any subcontractor and City.
8. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the

Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing the services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.

9. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices.

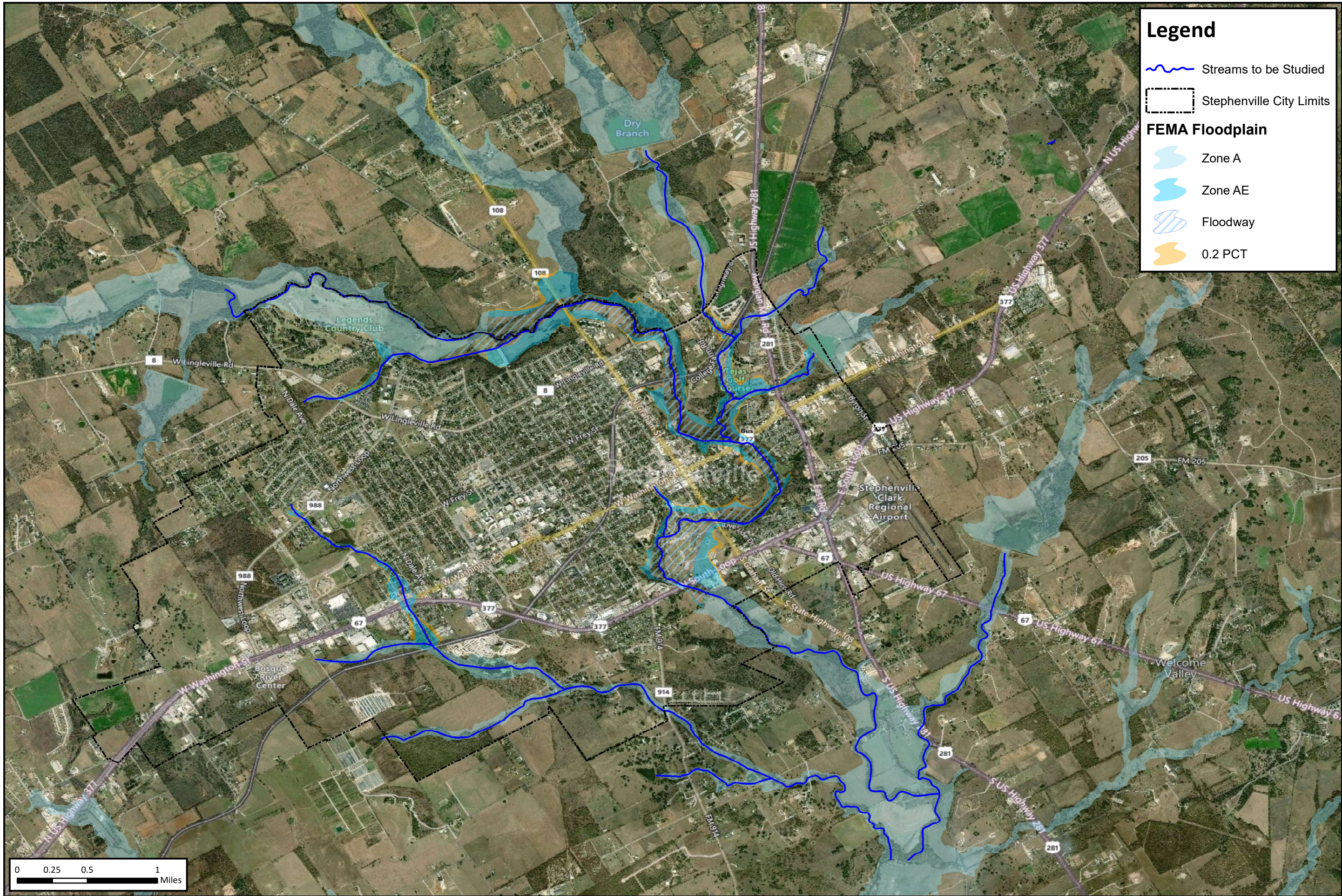
- 10. **PAYMENT:** Progress payments may be requested by FNI based on the amount of services completed. Payment for the services of FNI shall be due and payable upon submission of a statement for services to City and in acceptance of the services as satisfactory by the City. Statements for services shall not be submitted more frequently than monthly. Any applicable new taxes imposed upon services, expenses, and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.

If City fails to make any payment due FNI for services and expenses within thirty (30) days after receipt of FNI's statement for services therefore, the amounts due FNI will be increased at the rate of one percent (1%) per month from said thirtieth (30th) day, and, in addition, FNI may, after giving seven (7) days' written notice to City, suspend services under this Agreement until FNI has been paid in full, all amounts due for services, expenses and charges.

- 11. **ARBITRATION:** No arbitration arising out of, or relating to, this Agreement involving one party to this Agreement may include the other party to this Agreement without their approval.
- 12. **SUCCESSORS AND ASSIGNMENTS:** City and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of City and FNI are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

Neither City nor FNI shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of services hereunder.

- 13. **PURCHASE ORDERS:** If a Purchase Order is used to authorize FNI's Services, only the terms, conditions/instructions typed on the face of the Purchase Order shall apply to this Agreement. Should there be any conflict between the Purchase Order and the terms of this Agreement, then this Agreement shall prevail and shall be determinative of the conflict.



**Legend**

- Streams to be Studied
- Stephenville City Limits

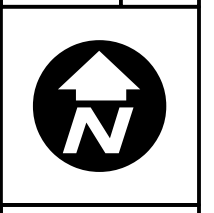
**FEMA Floodplain**

- Zone A
- Zone AE
- Floodway
- 0.2 PCT

<b>FIGURE 1</b>	
FILE	Figure 1
DATE	3/30/2021
SCALE	1"=1
DRAFTED	02645

# Study Limits

## Stephenville, TX



**FREESSE & NICHOLS**  
 801 Cherry Street, Suite 2800  
 Fort Worth, TX 76102  
 (P) 817-735-7300 (F) 817-735-7491

Path: \\FVP\References\Figure1.mxd