

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
ENGINEERING & PLANNING PROJECT NO. 2023-10003
CITY OF TOMBALL
SOUTH WASTEWATER TREATMENT PLANT EXPANSION**

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

THIS AGREEMENT is made, entered into, and executed by and between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and Freese & Nichols, Inc. ("Engineer").

WITNESSETH:

WHEREAS, the City desires to design and construct an expansion to the South Wastewater Treatment Plant (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to project planning and design, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional engineering;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I.
SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional services as outlined and defined in the Proposal attached hereto as Exhibit A, and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Engineer compensation as stated in the Section VII.

**SECTION II.
CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent engineering practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance of the services

agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

SECTION III. OWNERSHIP OF WORK PRODUCT

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same. It is further understood and agreed that ownership and usage rights associated with the above referenced documents and analyses, hereinafter referred to as instruments, are contingent upon Engineer's completion of the services which will result in the production of such instruments and Engineer's receipt of payment, in full, for said services. Additionally, City understands and agrees that the rights described and provided hereunder shall not preclude or prevent Engineer from continuing to use those processes, analyses and data.

SECTION IV. TIME FOR PERFORMANCE

The time for performance is an estimated 18-month duration beginning from the execution date of this Agreement. Upon written request of the Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

SECTION V. COMPLIANCE AND STANDARDS

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

SECTION VI. INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act

of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

**SECTION VII.
ENGINEER'S COMPENSATION**

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed \$4,933,000, including reimbursable expenses as identified in Exhibit "A".

**SECTION VIII.
INSURANCE**

Engineer shall procure and maintain insurance for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness, disease, or death, claims or damages because of injury to or destruction of property, including loss of use resulting therefrom, and claims of errors and omissions.

**SECTION IX.
TERMINATION**

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed maps, studies, reports, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

**SECTION X.
ADDRESSES, NOTICES AND COMMUNICATIONS**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Consultant at the following address:

Freese & Nichols, Inc.
Attn: Richard Weatherly
11200 Broadway Street, Suite 2320
Pearland, Texas 77584

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball
Attn: Project Manager
501 James Street
Tomball, Texas 77375

**SECTION XI.
LIMIT OF APPROPRIATION**

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

**SECTION XII.
SUCCESSORS AND ASSIGNS**

The City and Engineer bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the City nor Engineer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**SECTION XIII.
DISCLOSURE OF INFORMATION**

Engineer shall under no circumstances release any material or information developed in the performance of its services hereunder without the express written permission of the City.

**SECTION XIV.
MODIFICATIONS**

This instrument, including Exhibits A and B, contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

**SECTION XV.
ADDITIONAL SERVICES OF ENGINEER**

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Exhibit "A". These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Exhibit "A," up to the amount authorized in writing by the City.

**SECTION XVI.
CONFLICTS OF INTEREST**

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Consultant shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

**SECTION XVII.
PAYMENT TO ENGINEER FOR SERVICES AND
REIMBURSABLE EXPENSES**

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

**XVIII.
MISCELLANEOUS PROVISIONS**

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence or performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Engineer further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

E. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Engineer is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

F. In accordance with Chapter 2274 of the Texas Government Code, Engineer covenants that it: (1) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this contract against a firearm entity or firearm trade associations.

IN WITNESS WHEREOF, the City of Tomball, Texas, has lawfully caused this Agreement to be executed by its Mayor; and Engineer, acting by its duly authorized officer/representative does now sign, execute and deliver this instrument.

EXECUTED on this ___ day of _____, _____.

Company Name: Freese & Nichols, Inc

Richard Weatherly

Name: Richard Weatherly, PE

Title: Vice President/Project Manager

CITY OF TOMBALL, TEXAS

David Esquivel, City Manager

ATTEST:

Tracylynn Garcia, City Secretary

EXHIBIT A

SCOPE OF SERVICES AND RESPONSIBILITIES OF CITY

Tomball South WWTP Expansion

Final Design and Bid Phase Services

PROJECT UNDERSTANDING

The City of Tomball (City) is planning to expand its South Wastewater Treatment Plant (WWTP) from an Annual Average Daily Flow (AADF) of 1.5 MGD to 3.0 MGD; and a Peak 2-hour Flow (P2HF) of 6.0 MGD to 12.0 MGD to accommodate the City's projected growth. The City previously retained Freese and Nichols, Inc., (FNI) to conduct a preliminary design of the WWTP expansion and to prepare the TPDES permit major amendment. The scope of this project is to provide design and bid phase services for the expansion, which includes the project features identified in Table 1 below.

Table 1: Project Features

Project Feature	Description
Demolition	The following existing structures and equipment will be demolished: Influent lift station #2 and oxidation ditch.
Coarse Screening	Repurpose the existing lift station #1 to a new coarse screen structure (24 MGD total peak flow capacity) with two coarse screens, manual bypass channel, and dumpster building.
New Influent Lift Station	New lift station with dual wet well configuration and six submersible pumps (12 MGD firm peak flow capacity) expandable to an ultimate firm capacity of 18 MGD.
Headworks Facility	Expand the existing headworks facility with one additional fine screen (6 MGD), manual bypass screen, replacement of existing mechanical-vortex grit removal unit (12 MGD) including two grit pumps, grit dewatering unit, and new dumpster building.
New Splitter Box	One new splitter box to split flows from the headworks to the three new aeration basins.
New Aeration Basins and Blowers	Three new conventional activated sludge aeration basins designed for BOD and ammonia removal. New aeration basins sized to treat 3 MGD at design influent loadings. Basins will include selector zones. New blower building with four blowers (3 duty + 1 standby) for the new aeration basins.
New Secondary Clarifiers	Two new secondary clarifiers (6 MGD total peak flow capacity each).
New RAS Pump Stations	Two new return activated sludge (RAS) pump stations for pumping RAS from the new and existing clarifiers to the aeration basins. Each pump station will have 3 pumps (2 duty + 1 standby).
New WAS Pump Station	One new waste activated sludge (WAS) pump station for pumping WAS from the common RAS header to the rotary drum thickeners. The pump station will have 3 pumps (2 duty + 1 standby).
New Scum Pump Station	Two scum pumps in one new scum pit for the two new secondary clarifiers.

Project Feature	Description
New Tertiary Filters	Two new inside-out type tertiary disk filters for a total capacity of 12 MGD.
New UV System	Inclined type Ultraviolet (UV) Disinfection system for disinfection of filtered effluent. Three inclined UV modules in a single channel for a total capacity of 12 MGD.
Parshall Flume	New Effluent Channel with Parshall Flume measurement.
New Mechanical Sludge Thickeners	Replace existing mechanical sludge thickening system with two new rotary drum thickeners, flocculation tanks, and polymer feed system.
New Aerobic Digesters Blowers	Replace existing aerobic digester blowers with two (1 duty + 1 standby) new blowers with a new blower pad and canopy.
New Digested Sludge Pumps	Three new digested sludge pumps to serve the new centrifuge. One new sludge grinder placed before the sludge pumps.
New Sludge Dewatering System	Replace existing centrifuge with a new centrifuge with a drain diversion box.
New Odor Control System	Two new odor control units. One unit for the influent coarse screen and lift station, and one unit for the headworks dumpster building.
Vacuum Truck Receiving Station	New Vacuum truck receiving station with dewatering dumpster and ramp.
Plant Drain	Expand gravity plant drain system.
NPW System	Expand existing non-potable water system by adding two new vertical turbine pumps and one additional self-backwashing strainer.
Administration Building Improvements	Expansion of existing administration building to include a new break room. Design was already completed as part of the previous critical needs improvements phase I project. Scope includes update to the design.
Chemical Feed System	New chemical storage tank and feed pumps to feed Magnesium hydroxide for copper removal.
Site Civil	Site grading for the new units and new site concrete paved roads
Electrical	Three new electrical buildings: Distribution Electrical Building, MCC-G and MCC-E buildings.
SCADA	New SCADA system for overall plant.
Back-Up Power Generation	Additional natural gas generators.

- A. **Project Assumptions:** The scope of work, level of effort, budget and schedule is based on the following assumptions.
- The project will be self-funded by the City without state or federal funding assistance.
 - The project will be delivered using the Construction Manager at Risk (CMAR) collaborative delivery method.
 - The CMAR will be responsible for potholing utilities at tie-in points and critical crossings, based on requests and directions provided by the FNI Team as part of their Subsurface Utility Engineering (SUE). It is further assumed that the CMAR will be responsible for obtaining permits and utility locates (Texas One-call) necessary ahead of any potholing activities.
 - FNI’s standard Front-End Contract Documents (Div. 00) modified for the CMAR process will be

used.

- The City agrees to include provisions in the General Conditions that require the CMAR to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the City is named as an indemnified party.
- In performing these services, it is understood that FNI does not guarantee the CMAR's performance, nor is FNI responsible for the supervision of the CMAR's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by the CMAR, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.
- The design will accommodate effluent criteria based on the draft permit limits received from TCEQ (10/15/3 mg/L for BOD/TSS/NH3-N) in August 2023, which does not include Total Nitrogen or Total Phosphorus limits. The design will not provide enhanced nutrient removal as part of this expansion project but will provide accommodations for future enhanced nutrient removal including space for future selector zone basins.
- The application for the TPDES permit amendment for the expansion of the South WWTP was submitted in February 2023. The final design phase is anticipated to start in January 2024. Based on TCEQ's average review times of major permit amendments (12-18 months), the City may receive the final TPDES permit near the beginning or the middle of final design phase. If the final limits in the permit vary from the draft limits provided by the TCEQ, redesign for new or different permit limits than initially notified by TCEQ will be an additional service.

- B. **CMAR Coordination:** This scope anticipates and includes coordination with the selected CMAR for design and construction phase efforts. The scope of work assumes preparation and issuance of up to two (2) Guaranteed Maximum Price (GMP) proposal packages for this project. A general assumption of the scope of the proposed GMP packages is described below. The actual GMP package breakout will be determined in the early stages of the design with input from the CMAR and City.
- GMP Package #1: Procurement of long lead-time equipment and electrical gear.
 - GMP Package #2: Balance of plant construction.

- C. **Final Design Services:** FNI will provide the following final design phase services for the project features described in Table 1, based on design recommendations in the Preliminary Design and Permitting project.

- Process Mechanical Design
- Structural Design
- Electrical Design
- Instrumentation and Controls Design
- WWTP SCADA System Design
- Architectural Design
- HVAC and Plumbing Design
- Drainage and Paving Improvements

In final design, deliverables will be provided for City review at the 30%, 60%, and 90% deliverable phases. The project will be executed using 3D design software (Revit) for new structures, AutoCAD 2D for modifications to existing structures, and AutoCAD Civil 3D for site civil drawings. The primary deliverables at 30% will be the initial 3D models of major unit processes, basic plan and section views for structure

quantity take-offs, site plan, yard piping plan, electrical one-line diagrams, and Process and Instrumentation Diagrams (P&IDs). For subsequent deliverables, a status set of drawings and specifications will be produced for review by City and the CMAR. A workshop will be conducted to collect and document all comments for inclusion in the subsequent design milestone deliverable. The CMAR will develop, update, and maintain the cost model throughout the project with input from the design team. FNI will work with the CMAR to review the cost model and to confirm the assumptions built into the cost model are in line with the proposed design.

- D. **Bid Phase Services:** Support the City and CMAR in their bidding and procurement of equipment, materials, contracting and subcontracting services; including consolidation of plans and specifications into a single conformed set of documents for use during construction of the project. The FNI Team will assist the CMAR and City by providing Issued For Bid (IFB) documents, participating in pre-bid meetings, responding to bidder questions, and providing support to the CMAR and City during the award of bids received that will become part of a guaranteed maximum price (GMP) proposal.

- E. **Special Services – Influent Lift Station Physical Model Hydraulic Testing:** The preliminary design layout for the new influent lift station proposed for the plant expansion is based on a rectangular dual wet-well configuration with 3 pumps in each wet well. Per Initial conversations with the CMAR, changing the configuration of the lift station wet well from rectangular to circular configuration will allow quicker and easier construction of the lift station through caisson method which will provide significant cost savings. Hydraulic Institute guidelines require a physical model study for circular lift station with four or more pumps to identify potential unacceptable flow patterns in the proposed design and to derive acceptable intake sump and piping design. As a special service, FNI will provide subconsultant services for physical model development and testing per Hydraulic Institute standards for the proposed influent lift station in a circular dual wet well configuration.

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

- A. **PROJECT MANAGEMENT AND ADMINISTRATIVE DUTIES:** Upon execution of this AGREEMENT and upon receiving a Notice to Proceed from the City, FNI will provide the project management services for each phase as follows:
1. **Project Controls:** FNI shall manage scope, time, cost, quality, staff resources, communications, risk and procurements as necessary. Project controls shall include the management of the following “living-documents”. Some of these project controls, as indicated below, will be the responsibility of others and the FNI Team will provide a supporting role.
 - a. **Comment Log** – FNI will be primarily responsible for maintaining the Comment Log for each design milestone with input from CMAR and the City.
 - b. **Decision Log** – FNI will be primarily responsible for the Decision Log with input from CMAR and the City.
 - c. **Action Item Log** – FNI will be primarily responsible for the Action Item Log during design with input from CMAR and the City. During construction, the CMAR will be primarily responsible for the Action Item Log with input from FNI and the City.
 - d. **Risk Register** – FNI will be primarily responsible for the Risk Register during design with input from CMAR and the City. During construction, the CMAR will be primarily responsible for the Risk Register with input from FNI and the City.
 - e. **Cost Model** – the CMAR will be primarily responsible for the Cost Model and maintenance of a design change trend log. FNI Team will participate in the development, monitoring, and update of the cost model as the design progresses. The scope of work assumes updates of the cost model at 30%, 60%, 90%, and 100% submittal stages and up to two (2) intermittent updates at the request of the City.
 - f. **Overall Project Schedule** – the CMAR will be primarily responsible for the Project Schedule Model. FNI Team will participate in the development, monitoring, and update of the schedule model as the design progresses. FNI will coordinate with the CMAR to include the design schedule in the overall project schedule and will provide monthly updates including necessary revisions to bring the Project back on schedule if needed.
 2. **Communication:** Consult with the City throughout the project to see that the scope of services and the City’s requirements for the project are being met.
 3. **Invoicing:** FNI will prepare and submit monthly invoices to the City.
 4. **Monthly Status Reports:** FNI will prepare and submit monthly status reports to the City with FNI’s monthly invoice. Monthly status reports will include a one to two-page summary of the progress to date on the Project, work completed during the prior month, work anticipated to be completed during the upcoming month, and discussion of any scope, schedule, or budget issues that may need to be resolved.
 5. **Quality Assurance / Quality Control (QA/QC):** FNI will develop and implement a QA/QC plan for the work.

- B. **FINAL DESIGN PHASE:** FNI shall provide professional services in this phase as follows:
1. **Meetings and Site Visits:** Prepare agendas and minutes for meetings described below.
 - a. **Project Kickoff Meeting:** Conduct a Final Design Phase Kick-off Meeting with City and CMAR: (1) to review the scope of services, (2) review project schedule, (3) discuss and understand any other requirements or expectations the City may have for the project.
 - b. **Monthly Progress Meetings:** Conduct monthly progress and design review meetings, up to a maximum of twelve (12) meetings during the design phase with City's project team and CMAR. Provide meeting minutes for City and CMAR review. Meetings will be held in-person and at City's office. Meetings may extend up to full-day workshops including time for "over-the-shoulder" review of BIM models in a workshop setting. Specific meeting topics listed below are included in the total of twelve meetings.
 - i. Conduct one (1) 3D model review workshop at the 30% design level to review the preliminary 3D models, answer questions and receive comments from the City's project team.
 - ii. Conduct one (1) day-long design review workshop at the 60% and 90% design milestones to review the construction documents, answer questions and receive comments from the City's project team. To expedite the design phase, the scope and schedule assumes that all City comments will be received at the design review workshop. Constructability review comments will be received from the CMAR at the 60% review workshop, and biddability review comments will be received from the CMAR at the 90% review workshop.
 - iii. Conduct up to two (2) SCADA workshops with City's project team to discuss requirements for the HMI system, review preliminary versions of the HMI graphics, and receive input from City's project team and plant operators.
 - iv. Conduct up to three (3) workshops for Maintenance of Plant Operations (MOPO), and Construction Sequencing to establish the sequence of construction and any special operating procedures required during construction to enable the required details to be incorporated into the construction documents.
 - c. **Monthly Leadership Calls:** Conduct up to twelve (12) monthly virtual meetings. These meetings are expected to be limited to project leadership (City, CMAR, and FNI), concise, less than one hour, informal and without the need for agendas or meeting minutes.
 - d. **Weekly Internal Coordination Calls:** Conduct up to fifty-four (54) weekly virtual meetings with each engineering discipline to coordinate the design development. Include CMAR on internal coordination calls, as needed.
 - e. **Site Visits:** Conduct up to three (3) site visits by the engineering team to the WWTP, for coordination on design aspects for completion of the project.
 2. **Drainage Analysis:** A site drainage analysis for the development of the site will be prepared and submitted to City of Tomball and Harris County Flood Control District (HCFCD). The goal of the drainage analysis is to demonstrate no adverse impact to offsite stormwater runoff from the

proposed expansion of the WWTP based on City of Tomball and HCFCO drainage criteria. The following tasks are part of the site drainage analysis.

- a. Conduct one (1) site visit: Conduct a site visit to identify existing drainage patterns and possible outfall locations, which will be coordinated with the City. The discharge point will either be an existing roadside ditch, storm sewer system, or an existing drainage channel.
- b. Data Collection: Collect available topography, aerial photos, as-built plans for drainage infrastructure, and coordinate with the City and HCFCO to obtain past drainage studies for the site.
- c. Drainage Assessment: Perform a drainage assessment associated with the site development to quantify existing and proposed peak discharges for the site. Peak discharges will be developed for the 2, 10, 100, and 500-year storm events and will be determined from Atlas 14 Site Runoff Curves provided in the Harris County Flood Control's (HCFCO) Policy Criteria & Procedure Manual (PCPM), updated 10/23/18. The required detention volume will be computed using Method 1 from the HCFCO PCPM.

The WWTP expansion is partially located within the effective Willow Creek 500-year floodplain. If any fill is placed within the effective 500-year floodplain, floodplain fill mitigation will be required in addition to the detention associated with additional imperviousness.

There is currently a remapping effort being completed by HCFCO for the Willow Creek Watershed, which may impact the requirements by HCFCO for the drainage of this project. If any additional tasks are required beyond what is detailed in this scope, they will be considered an additional service. Identification of sizing of drainage improvements (included but not limited to channels, storm sewers, roadside ditches, or streets) downstream of the site are not included as part of this scope of work.

- d. Memorandum: A brief technical memorandum will be prepared and submitted to the City for review and comments. The memorandum will contain sufficient text, supporting data and exhibits, assumptions, and methodology to clearly illustrate the methods and results of the drainage study. Up to two (2) rounds of comments from the City will be addressed to obtain a drainage approval letter.
- e. Agency coordination: FNI Team will coordinate with the City and HCFCO to obtain drainage criteria required for the drainage analysis. FNI will conduct up to a total of three (3) meetings with City staff to discuss the drainage analysis.

3. Desktop environmental assessment of the project site:

- a. FNI environmental scientists will conduct a site visit to make observations at the project area in order to describe existing conditions and assess project impacts. The presence and locations of potential waters of the U.S., including wetlands, and of potential threatened / endangered species habitat will be identified. If the project requires a permit for activities regulated under Section 404 of the Clean Water Act or under the Endangered Species Act, then permitting recommendations will be documented. The preparation and submittal of a request for verification (RFV), pre-construction notification (PCN), or other Section 404 permit authorization from USACE (e.g., Individual Permit) can be provided as an additional service.

- b. Projects sponsored by a political subdivision of the State that disturb more than 5,000 cubic yards require consultation with the Texas Historical Commission (THC) according to Section 191.0525 (d) of the Antiquities Code of Texas. FNI will conduct a desktop cultural resources evaluation to be submitted to the THC for review by the State Historic Preservation Officer (SHPO). If archaeological or historical surveys are required by the THC, a Professional Archeologist will be sub-contracted to perform the surveys as an additional service upon the Client's written authorization.
4. **Design Development:** Prepare BIM models, drawings, specifications, Construction Contract Documents, designs, and layouts of improvements to be constructed for each milestone submittal described below. The scope of work assumes that the Design Criteria documented in the Preliminary Design Report (PDR) will be incorporated into the Final Design.

Drawings: Detailed design elements will be developed using AutoCAD and Autodesk Revit BIM software for modeling the plant arrangement, coordinating with the City on the detailed mechanical, equipment, and structures, and for the development of plan sheets for bidding purposes. As such, some reviews will include 3D BIM Model reviews, and some will incorporate traditional 2D plan reviews. Proposed review workshops and milestones are listed above and below.

Specifications and Contract Documents: This project assumes the use of FNI's standard Front-End i.e. Construction Contract Documents (Div. 00) modified for the CMAR process. FNI will use its technical standards for drawings and technical specifications (Div. 01 through Div. 46). FNI will coordinate a review of the Front-End Contract Documents with the City and CMAR, and will incorporate any changes to specification standards in the Supplemental Conditions and Front-End Contract Documents

a. **30% Design/3D Model Development:**

- i. Develop site plans, yard piping plans, and 3D models of all proposed process structures.
- ii. Develop P&IDs for all proposed processes.
- iii. Develop electrical one-line diagram.
- iv. Create scaled plan and section drawings for each major structure to aid CMAR in determining quantities for initial cost model. It is assumed that no labeling or details will be included in the drawings. One plan and up to two sections will be created per major structure.
- v. Develop list of technical specifications.
- vi. Conduct SCADA Monitoring and Control workshop.
- vii. Develop SCADA Business Requirements TM.
- viii. Develop HMI and Alarm Requirements.
- ix. Conduct internal QC of the 30% deliverable.
- x. Incorporate all review comments from the City and CMAR and provide 30% comment response form.
- xi. Deliverables:
 - 1. One (1) 3D PDF electronic copy of 3D models of major proposed treatment units.

2. One (1) PDF copy of basic plan/section views of major proposed treatment units, site plans, yard piping plans, One-Line Diagram, P&IDs, and basic scaled plan and section drawings for major, proposed treatment units.
 3. One (1) PDF electronic copy of 30% technical specification list.
- b. 60% Design/GMP Package #1:
- i. Prepare 60% design plans and specifications. All specifications will be at 60% level except for the technical specifications for process mechanical equipment and electrical gear which will be expedited to include in GMP Package #1 as described below.
 - ii. GMP Package #1 – Develop expedited technical specifications for equipment and materials to be pre-procured, up to the number described below:
 1. Level of effort assumes technical specifications for the following process mechanical equipment: (1) coarse screens, (2) influent lift pumps, (3) perforated plate fine screens, (4) grit removal equipment, (5) aeration basin blowers, (6) selector zone mixers, (7) clarifier mechanisms, (8) tertiary filters, (9) UV system, (10) rotary drum thickeners and associated polymer feed system, (11) RAS/WAS pumps, (12) scum pumps, (13) aerobic digester blowers, (14) centrifuge and digested feed pumps, (15) non-potable water pumps and automatic self-backwashing strainer, and (16) any other components associated with the above process equipment.
 2. The level of effort assumes technical specifications for the following electrical equipment: (1) Major (>2000 amp) breakers, (2) generators, (3) transformers, (4) switchgear, and (5) variable frequency drives.
 - iii. Conduct internal QC of the 60% deliverable including GMP Package #1.
 - iv. Incorporate all review comments, including constructability review comments, from the City and CMAR and provide 60% comment response form.
 - v. Deliverables:
 1. One (1) PDF electronic copy of 60% design plans and specifications.
 2. One (1) PDF electronic copy of technical specifications to be included in the GMP Package #1 (Equipment and Materials Pre-procurement Package).
 3. One (1) Log of FNI's review comments on Cost Model and Schedule.
 4. One (1) Log of comment responses.
- c. 90% Design/GMP Package #2 (Issued for Bid and Regulatory Review):
- i. Prepare 90% design plans and specifications.
 - ii. Conduct internal QC of the 90% deliverable.
 - iii. Incorporate all review comments, including biddability review comments, from the City and CMAR and provide 90% comment response form.
 - iv. Issued for Bid: Upon receipt and inclusion of 90% comments from City and CMAR, the 90% documents shall be used for bidding and regulatory review.
 - v. Deliverables:
 1. One (1) PDF electronic copy of 90% design plans and specifications.

2. One (1) Log of FNI's review comments on Cost Model and Schedule.
 3. One (1) Log of comment responses.
- d. 100% Design (Issued for Construction):
- i. Incorporate all changes made after bidding and regulatory review phase.
 - ii. Prepare final Issued for Construction (IFC) design plans.
 - iii. Prepare final IFC project specifications.
 - iv. Deliverables:
 1. One (1) PDF electronic copy of 100% design plans and specifications.
 2. One (1) Log of FNI's review comments on Cost Model and Schedule.
 3. One (1) Log of comment responses.
5. During preparation of 90% Plans and Specifications, coordinate with plant staff and assist the CMAR in the development of Preliminary Construction Sequencing and Maintenance of Plant Operations (MOPO)
 - a. Preliminary Construction Sequencing and MOPO Plan. CMAR will lead the development of the Preliminary Construction Sequencing Plan with input from the City and FNI. The preliminary construction sequencing and MOPO plan will develop a logical sequence of construction to minimize the impact to plant staff. Detail key tie-ins and critical durations and constraints to be incorporated into the contract documents..
 6. Coordinate with utility providers (electrical, natural gas) to provide increased service for the plant expansion as needed.
 7. Furnish City, when requested, the engineering data necessary for applications for routine permits required by local, state and federal authorities. The City will take the lead and coordinate on obtaining all local government permits.
 8. Submit Summary Transmittal Letter to the Texas Commission on Environmental Quality (TCEQ) for regulatory approval. As required, submit drawings, specifications, design documentation and Construction Contract Documents. No other submittals for regulatory or permitting reviews are anticipated or included in the Scope of Work.
- C. **BID PHASE:** Bid phase services assume the project is constructed based on a CMAR project delivery method. FNI will assist the CMAR and City with the following activities during the bidding process for up to two (2) guaranteed maximum price (GMP) proposal packages. The Balance of Plant GMP package will be divided by the CMAR into multiple bid packages according to the CMAR's subcontractor and vendor management plan.
1. Respond to questions and interpret bid documents. Prepare technical information to be incorporated into addenda by CMAR. The level of effort assumes twenty (20) bid phase Request for Information (RFI) requests.
 2. Attend up to two (2) pre-bid meetings and assist CMAR in describing technical aspects of the project to prospective bidders.

3. Generally, the CMAR tabulates and analyzes bids. However, if the CMAR elects to submit a bid in order to potentially self-perform a portion of the work, FNI will assist City to tabulate and analyze the bids received. FNI will review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct that portion of the project.
4. Recommend award of subcontracts for CMAR to self-perform work components as appropriate.
5. Deliverables:
 - a. Electronic copies of plans, specifications, bidding documents, and addenda.
 - b. Tabulation of selection criteria for Proposers if CMAR submits a bid.
 - c. Recommendation of Award with tabulation of bids if CMAR submits a bid.
 - d. Notice of award to selected bidder if CMAR submits a bid.

ARTICLE II

SPECIAL SERVICES: When requested by the City, FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project:

A. INFLUENT LIFT STATION PHYSICAL MODEL HYDRAULIC TESTING:

1. Provide subconsultant services for physical model development and testing per Hydraulic Institute standards for the proposed influent lift station in a circular dual wet well configuration. An allowance of **\$77,000** is assumed for this effort. Hydraulic testing beyond this allowance is an Additional Service.

ARTICLE III

ADDITIONAL SERVICES: Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. Additional Services to be performed by FNI, if authorized by City, are described as follows:

- A. Revisions to drawings, specifications or other 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.
- B. GIS mapping services or assistance with these services.
- C. 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.
- D. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- E. 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.
- F. Assisting City 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).
- G. Assisting City in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- H. Providing environmental support services not specifically listed in Basic Services, including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- I. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- J. Visits to the site more than the number of trips included in Basic and Special Services for periodic site visits, coordination meetings, or contract completion activities.
- K. Providing 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.
- L. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- M. Providing data, reports or briefings to City Council on the status of the project.
- N. Reviewing Bid Phase RFIs in excess of the number of reviews included in Basic Services.

ARTICLE IV

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the following schedule:

Task No.	Task Title	Time of Completion
1	Final Design	12 months from NTP
2	Bid Phase	3 months per GMP Package: <ul style="list-style-type: none"> Advertisement of GMP Package #1 (Procurement of major process equipment and electrical gear) will begin at the end of the 60% deliverable. Advertisement of GMP Package #2 (rest of the plant) will begin at the end of the 90% deliverable.

Tentative project schedule assuming Notice to Proceed in January 2024 is shown below:

Project Phase	2024												2025						2026		2027	
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul-Dec	Jan-Jun	Jul-Dec	Jan-Jun
Final Design																						
Project Kickoff	★																					
30% Design				★																		
60% Design/GMP Package #1							★															
90% Design/GMP Package #2 (Issued for Bid)											★											
Bid Phase																						
Advertisement and Bid Opening (Package #1)								★														
Package #1 Approval									★													
Advertisement and Bid Opening (Package #2)										★				★								
Package #2 Approval											★				★							
Council Approval												★				★						
Prepare Final Submittal (Issued for Construction Set)																						
Construction																						
Pre-Construction Meeting																						
Construction																						
Substantial Completion																						★
WWTP in Service																						★

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.

ARTICLE V

RESPONSIBILITIES OF CITY: City shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Designate in writing a person to act as City's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to City's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which City will require to be included in the drawings and specifications.
- C. 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.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as City deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.
- F. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- G. City shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. City shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by City.
- H. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as City may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as City may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as City may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- I. If City designates a person to serve in the capacity of Resident Project Representative who is not FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in an Attachment attached to and made a part of this Agreement before the Construction Phase of the Project begins. Said attachment shall also set forth appropriate modifications of the Construction Phase General Representation services together with such adjustment of compensation as appropriate.

- J. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.
- K. Give prompt written notice to FNI whenever City observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- L. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- M. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and City designate the following representatives:

Owner's Designated Representative – Meagan Mageo
Project Manager
City of Tomball
501 James Street
Tomball, TX 77375
(281) 290-1411
MMageo@tomballtx.gov

FNI's Designated Representative – Murali Erat, P.E.
11200 Broadway St., Ste 2320
Pearland, TX 77584
(832) 456-4709
Murali.Erat@freese.com

FNI's Accounting Representative – Kristina Isaac
10497 Town and Country Way, Suite 600
Houston, TX 77024
(716) 600-6860
Kristina.Isaac@freese.com

COMPENSATION

FNI proposes to perform the services outlined in the above sections for a total lump sum fee of \$ as shown in the table below.

Phase	Fee	Fee Type
BASIC SERVICES		
Final Design	\$4,724,522	Lump Sum
Bid Phase	\$131,478	Lump Sum
Total Basic Services:	\$4,856,000	
SPECIAL SERVICES		
Influent Lift Station Physical Modeling	\$77,000	Not to Exceed
Total Special Services:		
Total Project (Basic + Special Services):	\$4,933,000	

COMPENSATION

Compensation to FNI for Basic Services in Attachment SC shall be the lump sum of Four Million Eight Hundred Fifty Six Thousand Dollars (\$4,856,000).

Compensation to FNI for Special Services in Attachment SC shall be computed on the basis of the following Schedule of Charges, but shall not exceed Seventy Seven Thousand Dollars (\$77,000).

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	96	167
Professional 2	123	191
Professional 3	136	300
Professional 4	157	344
Professional 5	221	385
Professional 6	242	453
Construction Manager 1	113	153
Construction Manager 2	119	191
Construction Manager 3	143	194
Construction Manager 4	170	242
Construction Manager 5	204	286
Construction Manager 6	272	337
Construction Representative 1	79	85
Construction Representative 2	99	113
Construction Representative 3	126	181
Construction Representative 4	126	181
CAD Technician/Designer 1	85	116
CAD Technician/Designer 2	102	187
CAD Technician/Designer 3	147	238
Corporate Project Support 1	72	150
Corporate Project Support 2	82	211
Corporate Project Support 3	102	310
Intern / Coop	55	92

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 Guage (per day)	\$275
				Coating Inspection Kit (per day)	\$275
	Mounting (per sq. ft.)	\$2.00		Flushing / Cfactor (each)	\$500
	Binding (per binding)	\$0.25		Backpack Electrofisher (each)	\$1,000
				<u>Survey Grade</u>	<u>Standard</u>
				Drone (per day)	\$200 \$100
				GPS (per day)	\$150 \$50

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. 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 2023.

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** As used herein: (1) City refers to the party named as such in the Agreement between the City and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents; and (3) Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **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. To the fullest extent permitted by law, 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.
3. **STANDARD OF CARE:** FNI will perform all professional services under this Agreement with the professional skill and care ordinarily provided by competent members of the subject profession practicing under the same or similar circumstances and professional license as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of the subject profession. FNI makes no warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by FNI.

4. **INSURANCE:** FNI shall provide City with certificates of insurance with the following minimum coverage:

<u>Commercial General Liability</u>	<u>Workers' Compensation</u>
\$2,000,000 General Aggregate	As required by Statute
<u>Automobile Liability (Any Auto)</u>	<u>Professional Liability</u>
\$1,000,000 Combined Single Limit	\$3,000,000 Annual Aggregate

5. **CHANGES:** City, without invalidating the Agreement, may order changes within the general scope of Services required by the Agreement by altering, adding, and/or deducting from the Services to be performed. If any such change under this clause causes an increase or decrease in FNI's cost or time required for the performance of any part of the Services, an equitable adjustment will be made by mutual agreement and the Agreement will be modified in writing accordingly.

FNI will make changes to the drawings, specifications, reports, documents, or other deliverables as requested by City. However, when such changes differ from prior comments, directions, instructions, or approvals given by City or are due to causes not solely within the control of FNI, FNI shall be entitled to additional compensation and time required for performance of such changes to the Services authorized under this Agreement.

6. **OPINION OF PROBABLE CONSTRUCTION COSTS:** No fixed limit of project construction cost shall be established as a condition of the Agreement, unless agreed upon in writing and signed by the parties hereto. If a fixed limit is established, FNI shall be permitted to include contingencies for design, bidding, and price escalation in the construction contract documents to make reasonable adjustments in the scope of the project to adjust the project construction cost to the fixed limit. Such contingencies may include bid allowances, alternate bids, or other methods that allow FNI to

determine what materials, equipment, component systems, and types of construction are to be included in the construction contract documents. Fixed limits, if any, shall be increased by the same amount as any increase in the contract price after execution of the construction contract.

FNI will furnish an opinion of probable construction or program cost based on present day pricing, 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 prices. Accordingly, FNI cannot and does not warrant or represent that bids or cost proposals will not vary from the City's project budget or from any estimate or opinion of probable construction or program cost prepared by or agreed to by FNI.

7. **PAYMENT:** Progress payments may be requested by FNI based on the amount of Services completed. Payment for Services shall be due and payable upon submission of a statement for Services to City and in acceptance of Services as satisfactory by City. Statements for Services shall not be submitted more frequently than monthly. Any applicable taxes imposed upon the 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, expenses, and charges within 30 days after receipt of FNI's statement for Services therefore, the amounts due FNI will be increased at the rate of 1 percent per month from said 30th day, and, in addition, FNI may, after giving 7 days' written notice to City, suspend Services under this Agreement until FNI has been paid in full for all amounts due for Services, expenses, and charges.

If FNI's Services are delayed or suspended by City or 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.

8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports, data, and other project information developed in the execution of Services provided under this Agreement shall be the property of City upon payment of FNI's fees for Services. FNI may retain copies for record purposes. City agrees such documents are not intended or represented to be suitable for reuse by City or others. Any reuse by City or by those who obtained said documents from City without written verification or adaptation by FNI, will be at the City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. To the fullest extent permitted by law, City shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data, and other project information in the execution of Services provided under this Agreement in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to City, and FNI shall indemnify and hold harmless City from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting therefrom.

9. **TERMINATION:** The obligation to provide Services under this Agreement may be terminated by either party upon 10 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.
10. **CONSTRUCTION REPRESENTATION:** If required by the Agreement, FNI will furnish construction representation according to the defined scope for these Services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the construction contract documents. In performing these Services, FNI will report any observed deficiencies to City, however, it is understood that FNI does not guarantee the contractor's performance, nor is FNI responsible for the supervision of the contractor's operation and employees. FNI shall not be responsible for the contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident to the work of the contractor. FNI 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. If City designates a resident project representative that is not an employee or agent of FNI, the duties, responsibilities, and limitations of authority of such resident project representative will be set forth in writing and made a part of this Agreement before the construction phase of the project begins.
11. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** City agrees to include provisions in the general conditions of the construction contract that name FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by the contractor for the project (except workers' compensation and professional liability policies); and (2) as an indemnified party in any indemnification provisions where City is named as an indemnified party.
12. **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 project 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 Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing 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.
13. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City shall 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.
14. **PURCHASE ORDERS:** If a purchase order is used to authorize FNI's Services, only the terms, conditions, and 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 be determinative of the conflict.

15. **CONSEQUENTIAL DAMAGES:** In no event shall FNI 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 equipment or systems, loss of anticipated profits or revenue, non-operation or increased expense of operation), arising out of, resulting from, or in any way related to this Agreement or the project.
16. **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.
17. **SUCCESSORS AND ASSIGNMENTS:** City and FNI and the partners, successors, executors, administrators, and legal representatives of each 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.