

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
ENGINEERING SERVICES  
RELATED TO  
ENGINEERING & PLANNING PROJECT NO. 2019-10008  
CITY OF TOMBALL  
FM 2920 LIFT STATION IMPROVEMENTS**

**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 contract for the Design of Improvements to the FM 2920 Lift Station (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 1,200 calendar day 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 \$2,606,200, including reimbursable expenses and special services (if utilized) as identified in Exhibit "A".

## **SECTION VIII. INSURANCE**

Engineer shall procure and maintain insurance in accordance with the terms and conditions set forth in Exhibit "B," 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 \_\_\_\_\_, \_\_\_\_\_.

**Freese & Nichols, Inc.:**



Name: Richard Weatherly

Title: Vice President/ Project Manager

**CITY OF TOMBALL, TEXAS**

\_\_\_\_\_  
David Esquivel, City Manager

ATTEST:

\_\_\_\_\_  
Doris Speer, City Secretary

# EXHIBIT A

ATTACHMENT A

## SCOPE OF SERVICES AND RESPONSIBILITIES OF CITY

### PROJECT UNDERSTANDING

The FM 2920 Lift Station Consolidation project is part of the City of Tomball's effort to expand capacity of the wastewater collection system to their existing WWTP on the southwest side of town. The existing collection system includes a 30-inch sanitary sewer along Holderrieth Road from the South WWTP to a manhole and stub-out west of SH 249. The existing FM 2920 lift station does not have the capacity for future development needs; therefore, alternatives to expand the lift station/force main will be evaluated against the possibility of consolidating the lift station and flowing by gravity exclusively. For the basis of this scope, it is assumed that consolidation and flow by gravity will be feasible.

If decommissioning the FM 2920 lift station is feasible, a proposed 15,500 linear feet of 30-inch sanitary sewer would be installed from the south WWTP along Holderrieth Road from SH 249 west to Calvert Road, turning north along Calvert Road until N Humble Lake Road intersection and heading northwest paralleling through private property until reaching Treichel Road and turning north along Treichel Road to Waller-Tomball Road, and then west along Waller-Tomball Road to the existing FM 2920 lift station.

This project includes an alternative route study to evaluate the route that provides the best value to the City, detailed design of the selected route, bid phase services, and general construction representation services. Other special services include resident project representation, geotechnical investigation, topographic survey, easement preparation (if necessary), and environmental evaluation.

### Assumptions

- Consolidation of the FM 2920 Lift Station will be by gravity sewer south to the stubout on Holderrieth
- The construction package will be issued as a single bid package.
- The construction will be procured using the design, bid, build method.
- The City will contract materials testing separately.

**BASIC SERVICES:** Freese and Nichols, Inc. (FNI) may render the following professional services to the City of Tomball (OWNER) in connection with the project, described as: Wastewater Collection System – FM 2920 Lift Station Consolidation.

### TASK A: PROJECT MANAGEMENT

#### **A1. Project Kickoff Meeting**

FNI will conduct a project kickoff meeting with the City to review scope of services and project schedule, and to discuss the route study, technical design, operation, and other project set up items. FNI will provide the City with a data request memorandum identifying data needs.

#### **A2. Project Management and Communication**

Throughout the project, monthly status reports will be submitted that summarize the progress and document upcoming tasks. The monthly status reports will comprise a one-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.

**A3. Monthly Progress Meeting**

FNI will conduct up to twelve (12) monthly progress meetings to discuss routes, technical design issues, sequencing, and other project-related issues.

**A4. Quality Assurance/ Quality Control**

FNI will prepare a QA/QC plan including regularly scheduled reviews of project deliverables.

**A5. Coordinate Sub-consultant's Efforts**

FNI will coordinate efforts with all three sub-consultants:

- Surveying – Gorrondona & Associates, Inc
- Geotechnical Investigation / Material Testing: Ninyo & Moore
- Subsurface Utility Engineering (SUE) – The Rios Group

**TASK B: ALTERNATE ROUTE STUDY**

**B1. Prepare Route Study**

FNI will prepare a route study that evaluates up to two (2) options for the proposed wastewater collection system:

- Develop conceptual pipeline plan and profiles for each option. The plan and profiles will be reviewed with the OWNER and the alternatives compared to determine advantages and disadvantages of the proposed alternatives based on the profile characteristics.
- Prepare a hydraulic analysis for each pipeline option, verifying pipeline capacity and minimum grade to maintain flushing velocities for solids that may settle out of the flow;
- Prepare preliminary OPCC for each of the alternative options. Estimate of land costs shall be furnished to the OWNER;
- Submit one advance copy of the draft alternate route study, cost opinion, and associated maps to the OWNER;
- Prepare and participate in one alternate route study workshop. The objective of the workshop is to present and discuss the findings of the evaluation; and
- Incorporate comments from the OWNER and submit four (4) hard copies and one (1) electronic copy (PDF format) of the draft alternate route study, cost opinion and associated drawings, and submit four (4) hard copies and one (1) electronic copy (PDF format) of the final alternate route study to the OWNER.

**B2. Route Study Workshop**

FNI will prepare and participate in one alternate route study workshop. The objective of the workshop is to present and discuss the findings of the evaluation.

## **TASK C: DESIGN PHASE**

### **C1. Prepare Plans and Specifications**

FNI will prepare Plans and Specifications for the PROJECT based on the selected alternate route by the City. The PROJECT is based on the preparation of plans and specifications for one (1) combined set of construction documents for the proposed wastewater collection system. Preparation of additional packages or design of a larger diameter pipeline may be requested as an additional service. Pipeline drawings will include:

- Plan and profiles at 1-inch equal twenty (20) feet scale horizontally and 1-inch equal four (4) feet vertically (full size plans); traffic control plan; details; prepare general specification for Contractor's preparation of Storm Water Pollution Protection Plan.

### **C2. Permits**

FNI will prepare construction related permits required for the installation of the proposed pipeline, such as City, County, gas line, or power line. Any permits required for environmental purposes (USACE, EPA, THC, USFWD, etc.) shall be considered an additional service.

### **C3. OPCC**

FNI will prepare an opinion of probable construction costs for review by the OWNER following completion of the alignment route study. This opinion will be updated for the sixty percent (60%), the ninety percent (90%), and the final (100%) quality control review meetings (30% is covered under Alternate Route Study).

### **C4. Quality Control Review Meeting**

FNI will plan and participate in up to three (3) quality control review meetings with OWNER personnel. One of these meetings may require walking the alignment to resolve any special design issues. The meetings will be held at approximately the sixty percent (60%), the ninety percent (90%), and the final (100%) project completion stages. FNI will provide four (4) review sets (half size), and four (4) review sets of specifications a minimum of ten (10) working days before the review meetings. A meeting memorandum will be prepared documenting major revisions and decisions made during each of the meetings.

### **C5. Texas Commission on Environmental Quality (TCEQ)**

FNI will submit a summary letter to TCEQ verifying the PROJECT was designed in accordance with Sub-Chapter 217 of the TCEQ regulations. Submittal of plans and specs to TCEQ and any other regulatory agency shall be considered an Additional Service.

## **TASK D: BID OR PROPOSAL PHASE**

### **D1. Securing Bids**

Issue a Notice to Bidders to prospective contractors and vendors listed in FNI's database of prospective bidders, and to selected plan rooms. Provide a copy of the notice to bidders for Owner to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by Owner.

### **D2. Conducting Pre-bid Conference**

FNI will assist the Owner in conducting a pre-bid conference for the construction projects and coordinate

responses with Owner. Response to the pre-bid conference will be in the form of addenda issued after the conference. Attend the tour of the project site after the pre-bid conference.

**D3. Responding to Bid Questions**

FNI will assist the Owner by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.

**D4. Bid Opening**

FNI will assist the Owner in the opening, tabulating, and analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by Owner.

**D5. Preparation of Construction Contract Documents**

FNI will assist the Owner in the preparation of Construction Contract Documents for construction contracts. Provide ten (10) sets of Construction Contract Documents which include information from the apparent low bidders bid documents, legal documents, and addenda bound in the documents for execution by the Owner and construction contractor. Distribute five (5) copies of these documents to the contractor with a notice of award that includes directions for the execution of these documents by the construction contractor. Provide Owner with the remaining five (5) copies of these documents for use during construction. Additional sets of documents can be provided as an additional service.

**D6. Furnish Drawings and Specifications**

FNI will furnish contractor copies of the drawings and specifications for construction pursuant to the General Conditions of the Construction Contract.

**TASK E: CONSTRUCTION PHASE**

Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. FNI will endeavor to protect Owner in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. 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.

These services are based on the use of FNI standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures is an additional service. If general conditions other than FNI standards are used, the Owner agrees to include provisions in the construction contract documents that will require the construction contractor to include FNI and their subconsultants on this project to be listed as an additional insured on contractor's insurance policies.

#### **E1. Pre-construction Meeting**

FNI will assist the Owner in conducting pre-construction conference(s) with the Contractor(s), review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.

#### **E2. Communication Procedures**

FNI will establish communication procedures with the Owner and contractor. Submit monthly reports of construction progress. Reports will describe construction progress in general terms and summarize project costs, cash flow, construction schedule and pending and approved contract modifications.

#### **E3. Project Documentation**

FNI will establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.

#### **E4. Payment Requests**

Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that FNI recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.

#### **E5. Site Visits**

FNI will make visits appropriate to the stage of construction to the site (as distinguished from the continuous services of a Resident Project Representative) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the Owner against defects and deficiencies in the work of Contractors and will report any observed deficiencies to Owner. Up to eighteen (18) site visits are included. Visits to the site in excess of the specified number are an additional service.

#### **E6. Quality Review**

FNI will notify the contractor of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.

#### **E7. Coordinate Testing Laboratories**

FNI will coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project. The cost of such quality control shall be paid by Owner and is not included in the services to be performed by FNI.

**E8. Interpret Drawings and Specifications**

FNI will interpret the drawings and specifications for Owner and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by Owner, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.

**E9. Administering Construction Contracts**

FNI will establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the Owner to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the Owner. Documentation of field orders, where cost to Owner is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the Owner are an additional service. Substitutions of materials or equipment or design modifications requested by the Owner are an additional service.

**E10. Documentation for Contract Modifications**

FNI will prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the Owner on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the Owner if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.

**E11. Owner Furnished Equipment or Materials**

FNI will assist in the transfer of and acceptance by the construction contractor of any Owner furnished equipment or materials.

**E12. Final Review**

FNI will conduct in company with Owner's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the OWNER in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two trips are an additional service.

**E13. Construction Drawings**

FNI will revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. One (1) set of prints and one (1) electronic PDF on a CD of "Record Drawings" shall be provided by FNI to Owner.

## **TASK F: SPECIAL SERVICES**

### **F1. Resident Project Representation**

Resident Project Representative is FNI's agent at the site, will act as directed by and under the supervision of FNI, and will confer with FNI regarding Resident Project Representative's actions. Resident Project Representative's dealings in matters pertaining to the on-site Work shall in general be with FNI and CONTRACTOR, keeping Owner advised as necessary. Resident Project Representative's dealings with Subcontractors shall only be through or with full knowledge and approval of CONTRACTOR. Resident Project Representative shall generally communicate with Owner with the knowledge of and under the direction of FNI. FNI will have a full-time Resident Project Representative (RPR) on the Site approximately 48 hours per week for a duration of 78 weeks which includes part time management and oversight of a Construction Manager.

### **F2. Duties and Responsibilities**

The duties, responsibilities, and the limitations of authority of the RPR, and designated assistants, are as follows:

#### **F2.1. Schedule**

FNI will review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by CONTRACTOR and consult with FNI concerning acceptability.

#### **F2.2. Conferences**

FNI will attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

#### **F2.3. Liaison**

Serve as FNI's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of Contract Documents; and assist FNI in serving as Owner's liaison with CONTRACTOR when CONTRACTOR's operations affect Owner's on-site operations. FNI will assist in obtaining from Owner additional details or information, when requested.

#### **F2.4. Shop Drawings and Samples**

FNI will:

- a. Record date of receipt of Shop Drawings and Samples,
- b. Receive Samples which are furnished at the Site by CONTRACTOR, and notify FNI of availability of Samples for examination, and
- c. Advise FNI and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by FNI.

#### **F2.5. Review of Work, Rejection of Defective Work, Inspections and Tests**

FNI will:

- a. Conduct on-site observations of the Work in progress to determine if the Work is in general proceeding in accordance with the Contract Documents.
- b. Based on on the information, knowledge and belief of RPR, report to FNI whenever Resident Project Representative believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be

made; and advise FNI of Work the Resident Project Representative believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

- c. Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the CONTRACTOR maintains adequate records thereof; and observe record and report to FNI appropriate details relative to the test procedures and start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to FNI.

#### **F2.6. Interpretation of Contract Documents**

FNI will report when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by FNI.

#### **F2.7. Request for Revisions**

FNI will consider and evaluate CONTRACTOR's suggestions for revisions to Drawings or Specifications and report with Resident Project Representative's recommendations to FNI. Transmit to CONTRACTOR in writing decisions as issued by FNI.

#### **F2.8. Records**

FNI will maintain orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents, including all Work Change Directives, Addenda, Change Orders, Field Orders, Written Amendments, additional Drawings issued subsequent to the execution of the Contract, FNI's clarifications and interpretations of the Contract Documents, progress reports, submittals and correspondence received from and delivered to CONTRACTOR and other Project related documents.

#### **F2.9. Reports**

FNI will:

- a. Furnish periodic reports as required of progress of the work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawings and Sample submittals.
- b. Consult with FNI in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Written Amendments, Change Orders and Work Change Directives, obtaining backup material from CONTRACTOR and recommend to FNI Written Amendments, Change Orders, Work Change Directives, and Field Orders.
- d. When known, report immediately to FNI and Owner the occurrence of any accident.

#### **F2.10. Payment Requests**

Review Applications for Payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to Owner, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment at the Site but not incorporated in the Work.

#### **F2.11. Certificate, Maintenance and Operation Manuals**

During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to FNI for review and forwarding to Owner prior to final payment for the Work.

#### **F2.12. Completion**

- a. Before FNI issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- b. Observe whether CONTRACTOR has performed inspections required by laws or regulations, ordinances, codes or order applicable to the Work, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- c. Conduct a final inspection in the company of FNI, Owner and CONTRACTOR and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to FNI concerning acceptance.

**F3. Limitation of Authority of Project Representative:**

FNI shall not:

- a. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by FNI.
- b. Exceed limitations of FNI's authority as set forth in Agreement or the Contract Documents.
- c. Undertake any of the responsibilities of CONTRACTOR, Subcontractor, Suppliers, or CONTRACTOR's superintendent.
- d. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
- e. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work or any activities or operations of Owner or CONTRACTOR.
- f. Accept shop drawing or sample submittals from anyone other than the CONTRACTOR.
- g. Participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by FNI.

**TASK G: GEOTECHNICAL INVESTIGATION**

**G1. Geotechnical Investigation Scope**

Upon written notice to proceed, FNI shall retain (as a subconsultant) and monitor the services of Ninyo & Moore to perform geotechnical investigation services for the project. The following geotechnical services will be provided:

- a. Review readily available published and in-house geotechnical literature of the site and the general site area including geologic maps.
- b. Perform a reconnaissance of the project site and mark out proposed boring locations. We will also contact Texas811 prior to exploration.
- c. Drill log, and sample 34 exploratory borings along the alignment. The borings will range in depth from about 30 feet below ground surface (bgs) to 45 feet bgs.
- d. Collect geotechnical soil samples using conventional split-spoon and/or thin-wall tube sampling techniques for laboratory testing and analysis.
- e. Sampling Convert six of the borings to piezometers for water depth measurements. Boreholes not converted to piezometers will be backfilled with cuttings after drilling. We will record water levels in the piezometers after 24 hours and 30 days.
- f. Converted Perform laboratory testing that will generally consist of moisture content, No. 200 Wash, Atterberg limits, and strength testing.
- g. Atterberg Prepare a geotechnical report presenting our findings. The report will be sealed by a Professional Engineer licensed in the State of Texas and will include the following:
  - Description of work scope, laboratory, and field procedures;

- Maps and boring plans;
- Boring logs and laboratory test results;
- Description of subsurface soil and groundwater conditions;
- Earthwork considerations, including OSHA soil classifications;
- Excavation characteristics of onsite soils;
- Dewatering recommendations
- Lateral earth pressures; and
- Geotechnical guidelines for open-cut and trenchless construction.

## **TASK H: GEOTECHNICAL INVESTIGATION**

### **H1. Topographic Survey Scope**

Upon written notice to proceed, FNI shall retain (as a subconsultant) and monitor the services of Gorrondona & Associates, Inc (G&AI) to perform surveying services for the project. The following survey services will be provided:

- Topographic survey
- Research parcels/lots (approximately 57 tracts & 71 lots) along the proposed route and obtain copies of subdivision plats, utility easements and metes and bounds deeds. Prepare a deed sketch and locate property corners and establish existing right-of-way lines. Analyze and calculate the right-of-way and property lines of adjoining parcels. Addresses of parcels/lots shall be obtained and shown on the final design drawing. will research parcels/lots (approximately 44 tracts & 4-6 plats) along the proposed route and obtain copies of subdivision plats, utility easements and metes & bounds deeds. Prepare a deed sketch and locate property corners and establish existing right-of-way lines. Analyze and calculate the right-of-way and property lines of adjoining parcels. Addresses of parcels/lots shall be obtained and shown on the final design drawing.
- Establish horizontal and vertical control for the project. will horizontal and vertical control for the project. The horizontal control shall be on NAD83 (1993 Adjustment), Central Zone surface coordinates. The vertical control shall be NAVD 1988 vertical datum. Horizontal and Vertical Control will be based on City of Huntsville Mapping Control Points. The project control shall be set at 1000-foot intervals and temporary benchmarks shall be set every 2,500 feet for construction.
- Request buried communications utility plans from local provider; gas and electric plans from local utility companies; storm, wastewater and water plans from local municipality; for subsurface utility information. G&AI will contact "811" to locate underground utilities and structures G&AI will indicate the location of the marked utilities on the survey. G&AI is responsible for locating visible utilities and utilities marked by the utility company's representatives. G&AI is not responsible for utilities that are miss-located or utilities that are not visible from an on-site inspection G&AI will indicate City of Tomball GIS line work on the survey.
- G&AI will tie all improvements X, Y & Z (fire hydrants, water valves, water vaults, storm drains, manholes, driveways, pavement, curbs, limits of wooded areas, signs, buildings, power poles, etc.) along the proposed route (approximately 16,000 linear feet). Provide flowline elevations of all sanitary sewer, storm drainage inlets and manholes along the route. For the length of the project the survey shall include 100-foot cross-sections extending at a minimum of thirty (30) feet each side of the proposed alignment.
- G&AI will prepare a final design/topographic drawing in an AutoCAD 2017 file format showing all features located in the field, property lines & right-of-way lines, ownership information, one-foot interval contours and a land XML file. Deliverables shall also include a copy of the field notes, an ASCII coordinate file of all points located in the field and a hard copy of the coordinates.

- g. G&AI will sub-contract a third-party professional abstractor to provide the research and copies of documents for the City of Tomball storm sewer easement (approximately 44 tracts & 4-6 plats) and the vesting deeds both sides of the proposed alignment. The vesting deeds for the lots within recorded subdivisions will not be provided

#### **TASK I: EASEMENT LEGAL DESCRIPTION AND EXHIBIT PREPARATION**

##### **I1. Easement Legal Description and Exhibit Scope**

Upon written notice to proceed, FNI shall retain (as a subconsultant) and monitor the services of Gorrondona & Associates to perform easement preparation services for the project. The following easement preparation services will be provided:

- a. Prepare metes and bounds description with exhibit on letter size for up to twelve (12) proposed permanent easement and eight (8) temporary construction easements meeting the City of Tomball Standards.
- b. Deliverables shall include up to twelve (12) proposed permanent easement and eight (8) temporary construction easements approved, signed and sealed originals to the City of Tomball.

##### **I2. Easement Coordination**

Once the route study has been finalized and approved, FNI will prepare the outline and exhibit for each easement location and provide to surveyor to prepare metes and bounds. Coordinate with surveyor for width of easement and consistency between metes and bounds documents.

#### **TASK J: SUBSURFACE UTILITY ENGINEERING**

##### **J1. Subsurface Utility Engineering Scope**

Upon written notice to proceed, FNI shall retain (as a subconsultant) and monitor the services of The Rios Group (TRG) to perform SUE services for the project. The following SUE services will be provided:

- a. TRG proposes to perform Quality Level “A” SUE to locate utilities crossing the sanitary sewer alignment with Quality Level “B” SUE being required beforehand to designate the utilities and lay out the test holes. TRG expects to find water, communication, distribution gas, and pipelines. TRG will attempt to designate these utilities and any unknowns, however preliminary field investigations concluded that some areas may be difficult to access due to waterways and private property.
- b. The scope generally includes excavating test holes (QL A SUE) on utilities that are crossing the alignment of the proposed sanitary sewer. The specific scope includes excavating up to twenty (60) test holes. This assumes 30 test holes will be in the 0 to 4 ft depth range, 25 test holes will be in the 4 to 8 ft. depth range and 5 test holes will be in the 8 – 12 ft depth range.
- c. The scope includes calling in 811 dig ticket, coordinating with utility owners, designating utilities as required, vacuum excavation of test holes, and preparing SUE deliverables.

#### **TASK K: ENVIRONMENTAL EVALUATION**

##### **K1. Environmental Evaluation Scope**

The Environmental Evaluation shall be performed concurrently with the Alternate Route Study in order to evaluate all routes based on environmental constraints. FNI shall:

- a. Alternate route Desktop Evaluation – As part of the alternate route study, FNI environmental

scientists will conduct a desktop evaluation of up to two (2) alternate pipeline routes. The purpose of this assessment is to identify potential environmental constraints along the alternate pipeline routes and to assist project engineers with the identification of a preferred alignment;

- b. Gather and Review Existing Information – Prior to conducting a pedestrian survey along the proposed sanitary sewer alignment, FNI environmental scientists will assemble and review data such as aerial photographs, USGS topographic maps, National Wetlands Inventory (NWI) maps, the USGS National Hydrography Dataset (NHD), and soils data within the proposed project area;
- c. Conduct Pedestrian Survey - FNI environmental scientists will conduct a site visit to make observations along the alignment to document existing environmental conditions and assess potential permitting requirements. The presence and locations of waters of the U.S., including wetlands; potential threatened/endangered species habitat; protected trees; and vegetation cover types will be identified in the proposed project area;
- d. Coordinate with the Texas Historical Commission - Projects sponsored by public entities that affect a cumulative area greater than five acres or that disturb more than 5,000 cubic yards require advance consultation with the Texas Historical Commission (THC) according to Section 191.0525 (d) of the Antiquities Code of Texas. Because the proposed project is expected to exceed these thresholds, coordination with THC is expected to be required. FNI will draft a consultation letter to the THC for OWNER's review and comment. FNI will incorporate OWNER's comments and submit the consultation letter to the THC. Any follow up studies requested by the THC are not included in this scope of services but can be provided upon written authorization;
- e. Coordinate with Project Engineers - Utilizing information gathered during the pedestrian survey and consultation with the THC, FNI environmental scientists will coordinate with the project engineers to evaluate environmental permitting constraints associated with development of the project; and Prepare Technical Memorandum - Based on our understanding of the proposed project, it appears that the pipelines could be constructed to meet the terms and conditions of NWP 58, without submittal of a pre-construction notification (PCN) to the USACE. Information gathered during the pedestrian survey and consultation with the THC will be used to prepare a draft technical memorandum. The memorandum will include discussions of methodologies used, the hydrologic characterization and locations of potential waters of the U.S., and an opinion on their jurisdictional status. This memorandum will also include a discussion of how the proposed project could meet the terms and conditions of NWP 58, without requiring submittal of a PCN. If field findings or engineering design constraints are such that a PCN is required, then FNI could prepare and submit a PCN for an additional cost. The draft technical memorandum will be submitted to the OWNER for review and comment. After incorporating OWNER's comments into the document, FNI will submit a final technical memorandum to the OWNER.

### **Summary of Meetings**

- Project Kickoff Meeting
- Up to twelve (12) monthly progress meetings with City staff with topics including:
  - Alternate routes,
  - Technical design issues,
  - Sequencing,
  - And other project-related issues
- One (1) alternate route study workshop
- Up to three (3) quality control review meetings (60%, 90% & 100% deliverables)

- One (1) Pre-bid conference meeting
- One (1) Bid opening meeting
- One (1) Pre-construction meeting

#### **Summary of Presentations**

- One (1) alternate route study workshop

#### **List of Deliverables**

- Draft Alternate Route Study
- Final Alternate Route Study
- 60% Deliverable
- 90% Deliverable
- 100% Deliverable

#### **Summary of Project Schedule**

FNI agrees to complete the services as follows:

- Alternate Route Study: 90 Days after NTP
- Special Services (2-4): 100 Days after OWNER Approval of Route
- Final Design: 270 Days after OWNER Approval of Route
- Bid and Award Phase: 90 Days after Final Design Approval
- Construction Phase and Special Services (4): 18 Months is anticipated for construction + 30 days for Record Drawings

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.

### **Summary of Fee for Engineering Services**

FNI proposes to perform the basic and special services outlined in the above sections for a total **lump sum fee of \$1,016,539**, and **not-to-exceed fee of \$1,189,661**, for a **total project cost of \$2,206,200**, as shown in **Table 2**.

**Table 2: Summary of Fee for Basic and Special Services**

<b>Basic Services</b>	
<b>Description</b>	<b>Lump Sum Fee</b>
Tasks A - C: Project Management/Alternate Route Study/Final Design Phase	\$585,602
Task D: Bid Phase	\$44,312
Task E: Construction Phase General Rep.	\$386,625
<b>Basic Services Subtotal (Lump Sum)</b>	<b>\$1,016,539</b>
<b>Special Services</b>	
<b>Description</b>	<b>CPM Fee</b>
Task F: Resident Project Representation	\$ 778,658
Task G: Geotechnical Investigation	\$ 97,356
Task H: Topographic Survey	\$ 131,638
Task I: Easement Legal Description and Exhibit Prep	\$ 67,752
Task J: Subsurface Utility Engineering	\$ 101,370
Task K: Environmental Evaluation	\$ 12,888
<b>Special Services Subtotal (CPM)</b>	<b>\$1,189,661</b>
<b>Project Total (Basic + Special Services)</b>	<b>\$ 2,206,200</b>



FREEAND-02

KSUTTON

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/24/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>Ames &amp; Gough</b> <b>8300 Greensboro Drive</b> <b>Suite 980</b> <b>McLean, VA 22102</b>	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext): (703) 827-2277</b>		<b>FAX (A/C, No): (703) 827-2279</b>
	<b>E-MAIL ADDRESS: admin@amesgough.com</b>		
<b>INSURER(S) AFFORDING COVERAGE</b>			<b>NAIC #</b>
<b>INSURED</b>  <b>Freese and Nichols, Inc.</b> <b>801 Cherry Street, Suite 2800</b> <b>Fort Worth, TX 76102</b>	<b>INSURER A : Hartford Underwriters Insurance Company A+ (XV)</b>		<b>30104</b>
	<b>INSURER B : Hartford Casualty Insurance Company A+ (XV)</b>		<b>29424</b>
	<b>INSURER C : Hartford Accident and Indemnity Company A+ (XV)</b>		<b>22357</b>
	<b>INSURER D : Continental Casualty Company (CNA) A, XV</b>		<b>20443</b>
	<b>INSURER E :</b>		
<b>INSURER F :</b>			

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			42UUNOL5238	10/23/2022	10/23/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			42UENOL5558	10/23/2022	10/23/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			42 XHU OL 5747	10/23/2022	10/23/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 1,000,000
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	42WBOL6H3F	10/23/2022	10/23/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liab.			AEH008214422	10/23/2022	10/23/2023	Per Claim \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 PROFESSIONAL LIABILITY AGGREGATE LIMIT: \$10,000,000

RE: Project No. 2019\*10008 FM 2920 Lift Station Improvements

## CERTIFICATE HOLDER

## CANCELLATION

<b>City of Tomball, Texas</b> <b>Attn: Project Manager</b> <b>501 James Street</b> <b>Tomball, TX 77375</b>	<b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>
	<b>AUTHORIZED REPRESENTATIVE</b> 