

**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 construction 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 1,250 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 **\$4,764,500**, 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.  
Attention: Murali Erat, PE  
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 of 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.**



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Name: Murali Erat, PE

Title: Vice President/Project Manager

**CITY OF TOMBALL, TEXAS**

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David Esquivel, City Manager

ATTEST:

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Tracylynn Garcia, City Secretary

## EXHIBIT A

### SCOPE OF SERVICES AND RESPONSIBILITIES OF CITY

#### Tomball South WWTP Expansion Construction Phase Services

#### PROJECT UNDERSTANDING

The City of Tomball (City) is planning to expand its Tomball South Wastewater Treatment Plant (SWWTP) to accommodate the City's projected growth. Final Design and Bid Phase services have been completed under a separate contract. The scope of this contract is to provide construction phase services for the SWWTP expansion project. The project is being delivered using the Construction Manager at Risk (CMAR) collaborative delivery method. This scope anticipates and includes coordination with the selected CMAR for construction phase efforts. This contract includes construction phase and pos-construction phase services as noted below.

#### **Construction Phase Services**

FNI will provide construction phase services that will include General Representation, Materials Testing, Construction Management, Resident Project Representation, and Startup and Commissioning Services.

#### **Post-Construction Phase Services**

FNI will provide Post-Construction/Warranty Phase Services to develop the plant Operations and Maintenance Manual, assist the City with warranty items, and complete a final warranty walkthrough with City staff.

#### ARTICLE I

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

- A. PROJECT MANAGEMENT: FNI will provide project management services as follows:
  1. 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.
  2. Invoicing: FNI will prepare and submit monthly invoices to the City.
  3. Monthly Construction Status Reports: FNI will include monthly construction status reports with the invoice. Reports will describe construction progress in general terms and summarize project costs, payments made, construction schedule and pending and approved contract modifications.
- B. CONSTRUCTION PHASE GENERAL REPRESENTATION: The scope below is predicated on a construction phase that is estimated to last thirty (30) months (through Final Completion). Any delays resulting in an extension of construction phase services beyond thirty (30) months is considered an Additional Service.

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 CMAR 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.

1. Assist the City and CMAR in conducting one (1) pre-construction conference.
2. Review construction schedule prepared by the CMAR pursuant to the requirements of the construction contract documents.
3. Progress Meetings and Site Visits
  - a. Participate in up to thirty (30) monthly construction progress meetings with the City and CMAR. FNI will establish an agenda for these meetings, facilitate meeting discussion, and provide minutes for each meeting for City and CMAR review.
  - b. Conduct up to thirty (30) monthly visits to the construction 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 City against defects and deficiencies in the work of the CMAR and will report any observed deficiencies to the City. Monthly site visits will generally be conducted directly following monthly construction progress meetings. A brief monthly site visit construction progress report will be prepared and distributed to the City and CMAR to document construction activities observed, follow-up action required, and key photographs taken.
  - c. Conduct up to twenty (20) additional visits to the site, non-concurrent with the monthly site visits and meetings, to provide additional specialty observation or inspection as may be required for the project. A brief site visit memo will be prepared and distributed to the City and CMAR to document construction activities observed, follow-up action required, and key photographs taken.
4. Establish and maintain a project documentation system using FNI's FNiManager Project Document System, consistent with the requirements of the construction contract documents. Monitor the processing of CMAR'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 and respond to CMAR'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 project. Monitor the progress of the CMAR in sending and processing submittals to see that documentation is being processed in accordance with schedules.
5. Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by the CMAR, determine the amount that FNI recommends CMAR be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract. Project assumes thirty-one (31) pay requests will be processed by FNI, including thirty (30) monthly pay requests and one (1) final pay request.
6. Notify the CMAR of non-conforming work observed on site visits. Recommend actions to correct defective work and recommend to City any special materials tests or performance tests needed.

7. Interpret the drawings and specifications for City and CMAR.
8. Review up to sixty (60) quality related documents provided by the CMAR such as test reports, equipment installation reports or other documentation required by the Construction Contract Documents. Number of quality documents identified is estimated by FNI based on performance on similar projects and number of documents identified in the plans and specifications.
9. Review CMAR's requests for information (RFIs). Maintain document control systems, review CMAR RFIs and prepare responses in accordance with the Contract Documents. Provide interpretation and communicate engineering intent if information is not explicitly addressed in the Contract Documents. It is anticipated that FNI will review and respond to up to a total of one-hundred fifty (150) RFIs.
10. Provide for review of CMAR submittals including shop drawings, operation and maintenance manuals and other documentation required by the construction contract documents. It is anticipated that FNI will review and respond to up to a total of six hundred (600) submittals, including re-submittals.
11. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the CMAR on behalf of the City to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the City. Documentation of field orders, where completion schedule or cost to City is not impacted, will also be prepared. FNI will process up to twenty (20) request for change proposals, ten (10) change orders, and twenty (20) field orders during the construction phase.
12. Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality assurance of the Project. The Cost for Materials Testing is included in Special Services.
13. Attend factory witness testing of control panel equipment to verify the equipment is manufactured and assembled correctly, operates as intended, and is in accordance with Contract Documents. Scope assumes one (1) trip for three (3) days to manufacturer's factory located in Texas, including Engineer's time and travel costs. Per the Contract Documents, the CMAR will be responsible for the cost of additional trips to witness retests if initial factory testing fails to meet Contract requirements.
14. Conduct, in company with City's representative, one (1) substantial completion walkthrough of the project to establish final punch-lists for project completion and one (1) 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 CMAR before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the CMAR. Review and comment on the certificate of completion and the recommendation for final payment to the CMAR.
15. Retain and monitor the services of a subconsultant to perform survey and provide elevation certificates for four (4) new structures including MCC-D Building, Aeration Basin Blower Building, Administration Building, and Generator Pad.

16. Revise the construction drawings in accordance with the information furnished by the CMAR reflecting changes in the Project made during construction. Two (2) half-size and two (2) full-size prints of "Record Drawings" and electronic copy in PDF format shall be provided by FNI to the City. All digital record drawings will be provided to the City via electronic submission.

## ARTICLE II

**SPECIAL SERVICES:** 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. MATERIALS TESTING:

1. Retain and monitor the services of a subconsultant to provide for Construction Materials Testing for the purposes of City quality assurance during construction. An allowance of \$247,500 is assumed for this effort. Materials Testing beyond this allowance is an Additional Service.

### B. STARTUP AND COMMISSIONING SUPPORT SERVICES:

1. Pre-Commissioning Workshops. FNI will participate in pre-commissioning workshops with the Project stakeholders to advance the commissioning planning efforts. Workshops will be held monthly starting twelve (12) months prior to the scheduled commissioning.
2. FNI will develop the Commissioning Plan. The Commissioning Plan will consider equipment-specific conditions and constraints. The Commissioning Plan will include: Objective, Necessary Activities, Sequence of Activities, Roles and Responsibilities, Risks and Mitigation Strategies, Safety Considerations.
3. FNI will split the Project into manageable Functional and Performance Test Packages (FAPTPs) and develop these packages. FAPTP's will include: Name and tag number of all equipment to be started up concurrently or in the same package; All pre-startup requirements including responsibilities for the CMAR, Owner, and Engineer. Requirements for process mechanical, electrical, instrumentation, and automatic control needs; Detailed description of step-by-step procedures for startup, as well sequence of startup for equipment.
4. Scheduling Support. FNI will work with the CMAR's Project Team to develop a recommended baseline Training Schedule. The Training Schedule will identify training activities. FNI will develop the initial proposed schedule and work with the CMAR to integrate the Training Schedule with the CMAR's overall Project schedule. FNI will work with the CMAR's Project Team to develop a recommended baseline Commissioning Schedule. The Commissioning Schedule will identify commissioning activities. FNI will develop the initial proposed schedule and work with the CMAR to integrate the Commissioning Schedule with the CMAR's overall Project schedule. Schedules will be developed in a traditional critical path method (CPM) format using Microsoft Project.
5. Equipment Training
  - a. FNI will review the equipment training plans (agendas) for conformance with the Construction Contract.

- b. FNI will monitor the status of equipment training to verify completion prior to startup of the associated equipment/processes.
  - c. FNI will monitor the status of equipment O&M manuals to verify completion prior to startup of the associated equipment/processes.
  - d. System/Process Training. Based on the Draft System O&M Manual, FNI will facilitate system training for the Project. FNI will coordinate with the manufacturer to prepare an agenda for the training workshop. The manufacturer will prepare a slide deck to accompany the training session. It is the manufacturer's responsibility to provide adequate training in accordance with the Contract Documents. A copy of the slide deck will be provided to the Owner in PDF format. The training will be recorded and provided to the Owner.
  - e. Pre-Commissioning Field Testing. FNI will monitor the status of pre-commissioning field testing/documentation for each FAPTP to verify conformance with Construction Contract Documents and completion prior to startup of the associated equipment/processes.
6. Commissioning
- a. Commissioning Administration/Coordination – FNI will mobilize to the Project site to oversee the CMAR's implementation of the FAPTPs.
  - b. Recurring status meetings – FNI will participate in commissioning team meetings to monitor the progress and coordinate the near-term upcoming commissioning activities.
  - c. Commissioning Field Testing
    - i. FNI will witness the CMAR's execution of commissioning field testing for each FAPTP.
    - ii. CMAR will submit commissioning documentation for each FAPTP. FNI will review each commissioning field testing submittal for conformance with the Construction Contract Documents.
    - iii. FNI will monitor the status of each FAPTP to verify completion of commissioning field testing.
    - iv. FNI will provide support, as needed, to monitor and provide guidance for any issues that may arise during the commissioning field testing.
- C. RESIDENT PROJECT REPRESENTATION: Resident Project Representation (RPR) Services will be provided to City during the Construction Phase by FNI. Furnish the services of one full-time (45 hours per week before Substantial Completion, 40 hours per week after Substantial Completion) Resident Project Representative for a maximum period of 30 months. Provide the services of a full-time (40 hours per week) inspector for a period of 24 months. Effort beyond 30 months will be an Additional Service. The duties, responsibilities, and the limitations of authority of the Resident Project Representative, and designated assistants, are as follows:

1. Resident Project Representative is Design Professional's agent at the site, will act as directed by and under the supervision of Design Professional, and will confer with Design Professional regarding Resident Project Representative's actions. Resident Project Representative's dealings in matters pertaining to the on-site Work shall in general be with Design Professional and CMAR, keeping City advised as necessary. Resident Project Representative's dealings with Subcontractors shall only be through or with full knowledge and approval of CMAR. Resident Project Representative shall generally communicate with City with the knowledge of and under the direction of Design Professional.
2. Duties and Responsibilities of Resident Project Representative:
  - a. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by CMAR and consult with Design Professional concerning acceptability.
  - b. Conferences and Meetings: Attend meetings with CMAR, such as pre-construction conference, monthly progress meetings, job conferences and other project-related meetings, and pre-activity meetings.
3. Liaison:
  - a. Serve as Design Professional's liaison with CMAR, working principally through CMAR's superintendent and assist in understanding the intent of Contract Documents; and assist Design Professional in serving as City's liaison with CMAR when CMAR's operations affect City's on-site operations.
  - b. Assist in obtaining from City additional details or information, when requested.
4. Shop Drawings and Samples:
  - a. Record date of receipt of Shop Drawings and Samples.
  - b. Receive Samples which are furnished at the Site by CMAR, and notify Design Professional of availability of Samples for examination.
  - c. Advise Design Professional and CMAR of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by Design Professional.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
  - 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. Perform special inspections for new buildings to meet the requirements of the 2018 International Building Code (IBC) Chapter 17.
  - c. Report to Design Professional 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 Design Professional 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.
- d. Verify that tests, equipment and systems start-up, and operating and maintenance training are conducted in the presence of appropriate personnel, and the CMAR maintains adequate records thereof; and observe, record, and report to Design Professional appropriate details relative to the test procedures and start-ups.
  - e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Design Professional.
6. Interpretation of Contract Documents: Report to Design Professional when clarifications and interpretations of the Contract Documents are needed and transmit to CMAR clarifications and interpretations as issued by Design Professional.
  7. Request for Revisions: Consider and evaluate CMAR's suggestions for revisions to Drawings or Specifications and report with Resident Project Representative's recommendations to Design Professional. Transmit to CMAR in writing decisions as issued by Design Professional.
  8. Records:
    - a. Maintain at the job site 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, Design Professional's clarifications and interpretations of the Contract Documents, progress reports, submittals and correspondence received from and delivered to CMAR, and other Project related documents.
  9. Reports:
    - a. Furnish to Design Professional periodic reports as required of progress of the work and of CMAR's compliance with the progress schedule and schedule of Shop Drawings and Sample submittals.
    - b. Consult with Design Professional 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 CMAR and recommend to Design Professional Written Amendments, Change Orders, Work Change Directives, and Field Orders.
    - d. Report immediately to Design Professional and City the occurrence of any accident.
    - e. Furnish IBC special inspection reports for new buildings to the City's Building Official.
  10. Payment Requests: Review Applications for Payment with CMAR for compliance with the established procedure for their submission and forward with recommendations to City, 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.

11. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that certificates, operation and maintenance manuals and other data required to be assembled and furnished by CMAR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Design Professional for review and provided to City prior to final payment for the Work.

12. Completion:

- a. Before Design Professional issues a Certificate of Substantial Completion, submit to CMAR a list of observed items requiring completion or correction.
- b. Observe whether CMAR has performed inspections required by laws or regulations, ordinances, codes or order applicable to the Work, including those to be performed by public agencies having jurisdiction over the Work.
- c. Conduct a final inspection in the company of Design Professional, Construction Manager, City and CMAR 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 Design Professional concerning acceptance.

13. Limitations of Authority of Resident Project Representative:

- a. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by Design Professional.
- b. Shall not exceed limitations of Design Professional's authority as set forth in Agreement or the Contract Documents.
- c. Shall not undertake any of the responsibilities of CMAR, Subcontractor, Suppliers, or CMAR's superintendent.
- d. Shall not 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. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work or any activities or operations of City or CMAR.
- f. Shall not accept shop drawing or sample submittals from anyone other than the CMAR.
- g. Shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by Design Professional.

D. POST-CONSTRUCTION PHASE SERVICES

1. Develop an Operations and Maintenance Manual for the Tomball SWWTP to reflect the operation of the plant. The O&M Manual shall be consistent with current TCEQ requirements. The O&M Manual will include all equipment operations of the plant, both existing and new equipment, and related unit process operations. Participate in two (2) workshops to facilitate quality control, review the manual and receive input from the CMAR and City. Prepare two (2)

hard copies of the final O&M Manual in print and one (1) copy in PDF format to the City.

2. Coordinate scheduling of, and participate in, end-of-warranty period inspections, scheduled approximately one (1) month prior to completion of the CMAR's warranty period. FNI will provide a letter to the CMAR for each inspection identifying any deficiencies found in workmanship, materials or equipment, and the recommended actions to be taken with a schedule of completion. Two (2) warranty inspections are scheduled as eight (8) hour duration each for a professional engineer with some assistance from an engineer-in-training.

### 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. Field layouts or the furnishing of construction line and grade surveys.
- B. GIS mapping services or assistance with these services.
- C. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
- D. 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.
- E. Providing renderings, model, and mock-ups requested by the City.
- F. 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.
- G. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required regarding the replacement of such Work.
- H. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by City.
- I. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- J. Providing shop, mill, field or laboratory inspection of materials and equipment except as included in Special Services. Observe factory tests of equipment at any site remote to the project or observing tests required because of equipment failing the initial test except for as included in Basic Services.
- K. Conducting pilot plant studies or tests.



- L. 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.
- M. 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).
- N. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- O. 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.
- P. Providing environmental support 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.
- Q. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- R. 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.
- S. Services required to resolve bid protests or to rebid the project for any reason.
- T. Visits to the site more than the number of trips included in Basic Services for periodic site visits, coordination meetings, or contract completion activities.
- U. Any services required because of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- V. Providing services after the completion of the construction phase not specifically listed in Basic or Special Services.
- W. Providing services on an accelerated time schedule. The scope of this service includes 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.
- X. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- Y. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.
- Z. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- AA. Provide follow-up professional services during Contractor's warranty period besides those included in Special Services.

- BB. Reviewing construction submittals and RFIs in excess of the number of reviews included in Basic Services.
- CC. Providing services for processing contract modifications in excess of the number included in Basic Services.
- DD. Materials testing in excess of the amount included in Special 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	Construction Phase Services	30 months from Construction NTP (to Final Completion)
2	Post-Construction Services O&M Manual Warranty Inspections	1 month after Final Completion 1 month prior to Completion of CMAR's Warranty Period

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. City recognizes and expects that change orders may be required to be issued during construction. The responsibility for the costs of change orders will be determined on the basis of applicable contractual obligations and professional liability standards. FNI will not be responsible for any change order costs due to unforeseen site conditions, changes made by or due to the City or CMAR, or any change order costs not caused by the negligent errors or omissions of FNI. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, FNI is liable for change order costs. It is recommended that the City budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.
- B. 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.
- 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 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 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:

City's Designated Representative – Meagan Mageo  
Project Manager  
City of Tomball  
501 James Street  
Tomball, TX 77375  
(281) 290-1411  
[MMageo@tomballtx.gov](mailto: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](mailto: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](mailto:Kristina.Isaac@freese.com)

**COMPENSATION**

Phase	Fee	Fee Type
<b>BASIC SERVICES</b>		
Project Management and Construction Phase General Representation	\$ 2,269,736	Lump Sum
<b>Total Basic Services:</b>	<b>\$ 2,269,736</b>	
<b>SPECIAL SERVICES</b>		
Materials Testing	\$ 247,500	Cost Plus Max
Startup and Commissioning Services	\$ 235,364	Cost Plus Max
Resident Project Representation	\$ 1,918,565	Cost Plus Max
Post-Construction Phase Services	\$ 93,335	Cost Plus Max
<b>Total Special Services:</b>	<b>\$ 2,494,764</b>	
<b>Total Project (Basic + Special Services):</b>	<b>\$4,764,500</b>	