

**PROFESSIONAL SERVICES AGREEMENT**

STATE OF TEXAS §

COUNTY OF TARRANT §

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

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement, City agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as On-Call Construction Management and Inspection Support.
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with Project as set forth in Attachment SC – Scope of Services and Responsibilities of City which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** City agrees to pay FNI for all professional services rendered under this Agreement for time and materials in accordance with Attachment CO – Compensation which is attached and made a part of this Agreement. FNI shall perform professional services as outlined in the "Scope of Services" for a not to exceed fee of Fifty Thousand Dollars, \$50,000.

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

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

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

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

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

**Freese and Nichols, Inc.**

By: Richard Weatherly

Richard Weatherly, Vice President  
Print Name and Title

Date: 7-26-22

ATTEST: Maria R. Cortez

**City of Tomball, TX**

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

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

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

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

**SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT**

PROJECT UNDERSTANDING

Freese and Nichols, Inc. (FNI) will conduct on call planning and engineering services for the City of Tomball (City) during its Fiscal Year 2022. It is understood that the City will authorize one \$50,000 Purchase Order for On-Call Construction Management and Inspection Support.

ARTICLE I

**BASIC SERVICES:** Freese and Nichols, Inc. (FNI) shall render the following professional services to the City of Tomball (OWNER) in connection with the project, described as: On-Call Construction Management and Inspection Support.

ON-CALL SERVICES

At the City's request, FNI will provide On-Call Construction Management and Inspection Support, in support to City staff. This could include, but is not limited to:

- Provide Construction Management services as requested
- Provide Construction Inspection services as requested
- Other services as requested

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: N/A

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. N/A

ARTICLE IV

**TIME OF COMPLETION:** On-Call Services 8/01/2022 – 10/30/2022

## ARTICLE V

**RESPONSIBILITIES OF CLIENT:** Client shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Client 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 Client or Contractor, 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 Client 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 Client'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 Client's policies and decisions with respect to FNI's services for the Project.
- C. Provide all criteria and full information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Client will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 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 Client 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. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Client 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 Client 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 Client 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.
- G. Give prompt written notice to FNI whenever Client 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.
- H. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE VI

**DESIGNATED REPRESENTATIVES:** FNI and Client designate the following representatives:

Client's Designated Representative –

Client's Accounting Representative –

FNI's Designated Representative – Matthew Cartwright  
10497 Town and Country Way, Ste 600  
Houston, TX 77204  
(713) 600-6800  
Matt.Cartwright@freese.com

FNI's Accounting Representative – Marissa Mendoza  
10431 Morado Circle, Building 5; Suite 300  
Austin, TX 78759  
(512) 381-1837  
Marissa.Mendoza@freese.com

**COMPENSATION**

Compensation to Freese and Nichols shall be based on the following Schedule of Charges.

**Schedule of Charges:**

<b><u>Position</u></b>	<b><u>Min</u></b>	<b><u>Max</u></b>	<b><u>Position</u></b>	<b><u>Min</u></b>	<b><u>Max</u></b>
Architectural Intern I	115	128	O&G Construction Manager II	122	135
Architectural Intern II	128	157	O&G Construction Manager III	135	164
Architect IV	130	159	O&G Engineer I	96	117
Architect V	196	202	O&G Engineer II	117	130
Architect VI	213	260	O&G Engineer III	130	152
Architect VII	260	286	O&G Engineer IV	140	171
Landscape Architectural Intern	120	147	O&G Engineer V	228	245
Landscape Architect IV	131	160	O&G Engineer VI	206	256
Landscape Architect V	180	190	O&G Engineer VII	256	282
Landscape Architect VI	190	251	Environmental Scientist I	88	88
Landscape Architect VII	251	306	Environmental Scientist II	98	104
Document Control Specialist I	80	97	Environmental Scientist III	98	124
Document Control Specialist II	119	125	Environmental Scientist IV	122	272
Construction Representative	82	176	Environmental Scientist V	168	183
Construction Manager I	101	131	Environmental Scientist VI	176	212
Construction Manager II	88	167	Environmental Scientist VII	190	284
Construction Manager III	128	158	Environmental Scientist VIII	219	268
Construction Manager IV	151	206	Hydrologist I	88	98
Construction Manager V	186	259	Hydrologist II	98	119
Construction Manager VI	229	292	Hydrologist III	111	136
Program Manager I	161	183	Hydrologist IV	136	155
Program Manager II	224	261	Hydrologist V	155	190
Program Manager III	290	328	Hydrologist VI	193	236
Engineer I	106	149	Hydrologist VII	252	308
Engineer II	61	123	Senior Geologist	139	170
Engineer III	119	166	Planner I	98	109
Engineer IV	132	184	Planner II	109	109
Engineer V	160	229	Planner III	112	118
Engineer VI	203	340	Planner IV	142	154
Engineer VII	241	341	Planner V	144	176
Engineer VIII	295	375	Planner VI	207	233
Engineering Technician	138	169	Planner VII	237	301
Group Manager	227	366	BIM/CAD Designer I	109	162
Lead Technical Professional	272	354	BIM/CAD Designer II	142	195
Electrical Engineer I	108	110	BIM/CAD Manager	181	206
Electrical Engineer II	112	124	BIM/CAD Supervisor	152	185
Electrical Engineer III	124	129	BIM/CAD Technician I	67	78
Electrical Engineer IV	150	190	BIM/CAD Technician II	74	100
Electrical Engineer V	191	242	BIM/CAD Technician III	89	140
Electrical Engineer VI	210	264	Designer I	119	152
Mechanical Engineer I	91	101	Designer II	146	205
Mechanical Engineer II	101	124	Senior Designer	200	233
Mechanical Engineer III	131	160	GIS Analyst I	81	88
Mechanical Engineer IV	136	146	GIS Analyst II	91	94
Mechanical Engineer V	184	200	GIS Analyst III	104	127
Mechanical Engineer VI	183	224	GIS Analyst IV	107	134
Intern	48	82	GIS Analyst V	102	172
Corporate Project Support	55	208	Utility Coordinator	102	125
			3D Visualization Coordinator	231	282

**Rates for In-House Services****Technology Charge**

\$8.50 per hour

**Bulk Printing and Reproduction**

	<b><u>B&amp;W</u></b>	<b><u>Color</u></b>
Small Format (per copy)	\$0.10	\$0.25
Large Format (per sq. ft.)		
Bond	\$0.25	\$0.75
Glossy / Mylar	\$0.75	\$1.25
Vinyl / Adhesive	\$1.50	\$2.00
Mounting (per sq. ft.)	\$2.00	
Binding (per binding)	\$0.25	

**OTHER DIRECT EXPENSES:**

Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and rates will be adjusted annually in February. Last updated February 2019.

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**TERMS AND CONDITIONS OF AGREEMENT**

1. **DEFINITIONS:** As used herein: (1) City refers to the party named as such in the Agreement between the City and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents; and (3) Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **INFORMATION FURNISHED BY CITY:** City will assist FNI by placing at FNI’s disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI’s reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by City. To the fullest extent permitted by law, City agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs, and expenses arising therefrom. FNI shall disclose to City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications, or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.
3. **STANDARD OF CARE:** The standard of care for all professional Services performed or furnished by FNI under this Agreement will be the skill and care ordinarily used by members of the subject profession practicing under the same or similar license and circumstances at the same time and in the same locality. FNI makes no warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by FNI.
4. **INSURANCE:** FNI shall provide City with certificates of insurance with the following minimum coverage:

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

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

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

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

included in the construction contract documents. Fixed limits, if any, shall be increased by the same amount as any increase in the contract price after execution of the construction contract.

FNI will furnish an opinion of probable construction or program cost based on present day pricing, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices. Accordingly, FNI cannot and does not warrant or represent that bids or cost proposals will not vary from the City's project budget or from any estimate or opinion of probable construction or program cost prepared by or agreed to by FNI.

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

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

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

8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports, data, and other project information developed in the execution of the Services provided under this Agreement shall be the property of City upon payment of FNI's fees for Services. FNI may retain copies for record purposes. City agrees such documents are not intended or represented to be suitable for reuse by City or others. Any reuse by City or by those who obtained said documents from City without written verification or adaptation by FNI, will be at the City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. To the fullest extent permitted by law, City shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data, and other project information in the execution of the Services provided under this Agreement in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to City, and FNI shall indemnify and hold harmless City from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting therefrom.
9. **TERMINATION:** The obligation to provide Services under this Agreement may be terminated by either party upon 10 days' written notice. In the event of termination, FNI will be paid for all Services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.

10. **CONSTRUCTION REPRESENTATION:** If required by the Agreement, FNI will furnish construction representation according to the defined scope for these Services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the construction contract documents. In performing these Services, FNI will report any observed deficiencies to City, however, it is understood that FNI does not guarantee the contractor's performance, nor is FNI responsible for the supervision of the contractor's operation and employees. FNI shall not be responsible for the contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident to the work of the contractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the project site or otherwise performing any of the work of the Project. If City designates a resident project representative that is not an employee or agent of FNI, the duties, responsibilities, and limitations of authority of such resident project representative will be set forth in writing and made a part of this Agreement before the construction phase of the Project begins.
11. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** City agrees to include provisions in the general conditions of the construction contract that name FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by the contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the indemnification provisions where the City is named as an indemnified party.
12. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the project site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing the Services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.
13. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City shall notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Agreement shall create any contractual relation between any subcontractor and City.
14. **PURCHASE ORDERS:** If a purchase order is used to authorize FNI's Services, only the terms, conditions, and instructions typed on the face of the purchase order shall apply to this Agreement. Should there be any conflict between the purchase order and the terms of this Agreement, then this Agreement shall prevail and be determinative of the conflict.
15. **CONSEQUENTIAL DAMAGES:** In no event shall FNI be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental, or consequential damages (such as loss of product, loss of use of equipment or systems, loss of anticipated profits or revenue, non-operation or increased expense of operation), arising out of, resulting from, or in any way related to this Agreement or the Project.
16. **ARBITRATION:** No arbitration, arising out of or relating to this Agreement, involving one party to this Agreement may include the other party to this Agreement without their approval.



17. **SUCCESSORS AND ASSIGNMENTS:** City and FNI and the partners, successors, executors, administrators, and legal representatives of each are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

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