

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
ENGINEERING & PLANNING PROJECT NO. 2023-10002
CITY OF TOMBALL
NORTH AND SOUTH WASTEWATER TREATMENT PLANT
PERMIT RENEWAL AND AMENDMENT**

**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 complete a Permit Renewal for the North Wastewater Treatment Plant and a Permit Amendment for 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 365 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 **\$103,000.00**, including reimbursable expenses 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 CLIENT

PROJECT UNDERSTANDING

The Texas Pollutant Discharge Elimination System (TPDES) permits for the City of Tomball's (City) North Wastewater Treatment Plant (WWTP) and South WWTP will expire on August 7, 2023, and August 13, 2023, respectively. The application for renewal or amendment is to be submitted to TCEQ 6 months prior to the date of expiration of the permit. This scope of work is to provide permitting assistance to the City for the following:

- Permit renewal for the North WWTP
- Permit major amendment for the South WWTP for expansion from 1.5 Million Gallons per Day (MGD) to 3.0 MGD annual average daily flow.

ARTICLE I

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

A. TPDES PERMITTING ASSISTANCE

Provide assistance to the City in preparing applications for:

- **North WWTP** – Renewal of the TPDES permit. No change in the plant's permitted flow rate will be requested.
 - **South WWTP** – A major amendment to the TPDES permit to expand the average daily flow from 1.5 MGD to 3.0 MGD; and peak 2-hour flow from 6.0 MGD to 12.0 MGD.
1. Compile Existing Information. FNI will review data and identify information needed for the applications including evaluation of receiving water stream physical characteristics, if needed. City will provide FNI with previous application documents and relevant data.
 2. Laboratory Analysis. FNI shall retain the services of an analytical laboratory for pollutant sampling and analysis required for the permit applications. FNI will provide the laboratory copies of tables to be completed from the current TCEQ application form, including the analyses of pollutants in treated effluent. The laboratory will complete these tables to reduce the risk of transcription errors.
 3. Compile Effluent Analysis Results. Upon receipt of laboratory sampling results, FNI will review the tables for consistency with minimum analytical limits (MALs) and for reasonability of the results.
 4. Prepare Permit Applications and Transmittal Letter. FNI will obtain the current TPDES permit application forms from the TCEQ and prepare draft permit renewal application for the North WWTP and draft permit amendment application for the South WWTP. The prepared applications will include maps, engineering drawings, schematic diagrams, and other figures as required. FNI will provide an electronic copy of the applications for the City's review. FNI will finalize the applications based on the City's comments and deliver the final applications in three (3) hard copies to the TCEQ. FNI will also provide up to three (3) hard copies of the final applications for the City's files.

5. Follow-Up with TCEQ. FNI estimates that it may take up to 100 hours to address TCEQ comments after submitting the applications. If the effort is anticipated to exceed this amount, in order to secure final TPDES permits, FNI will notify the City for written approval of a budget modification to proceed. Tasks related to resolving protests on the TPDES permit will be an additional service.

ARTICLE II

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by Client, which are not included in the above-described Basic Services, are described as follows:

- A. 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.
- B. 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.
- C. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, and other assistance required to address environmental issues.
- D. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the Owner.
- E. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- F. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
- G. Providing data, reports or briefings to City Council on the status of the project.
- H. The scope of services for this project assumes that the TPDES applications will be processed by the TCEQ as uncontested, routine TPDES permit applications that would not require additional effort beyond that defined in Basic Services. Effort associated with any contested TPDES permits is an additional service.

ARTICLE III

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 assuming the notice to proceed is issued no later than October 24, 2022:

- Notice to Proceed: October 17, 2022 (Tentative)
- Kick-off Meeting: October 31, 2022
- Submit Draft TPDES Applications to City for Review: January 16, 2023
- Submit Final TPDES Permit Applications to TCEQ: February 6, 2023

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 Client 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.

ARTICLE IV

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

- A. Designate in writing a person to act as 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.
- B. 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 standards which Client will require to be included in the drawings and specifications.
- C. Submittal of the application fee to TCEQ prior to application submission.
- D. Complete publication of first and second Public Notices, as required by TCEQ.
- E. 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 of the Project.
- F. Examine all studies, reports, sketches, 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.
- 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. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.

ARTICLE V

DESIGNATED REPRESENTATIVES: FNI and Client designate the following representatives:

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

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

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

ARTICLE VI

FNI proposes to perform the basic services outlined in the above sections for a **Not-To-Exceed fee of \$103,000.**

Phase	Fee	Fee Type
North WWTP Permit Renewal	\$38,000	Not To Exceed
South WWTP Permit Amendment	\$65,000	Not To Exceed
Total Basic Services:	\$103,000	



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/28/2022

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).

PRODUCER Ames & Gough 8300 Greensboro Drive Suite 980 McLean, VA 22102	CONTACT NAME: PHONE (A/C, No, Ext): (703) 827-2277		FAX (A/C, No): (703) 827-2279
	E-MAIL ADDRESS: admin@amesgough.com		
INSURER(S) AFFORDING COVERAGE			NAIC #
INSURED Freese and Nichols, Inc. 801 Cherry Street, Suite 2800 Fort Worth, TX 76102	INSURER A : Hartford Underwriters Insurance Company A+ (XV)		30104
	INSURER B : Twin City Fire Insurance Company A+ (XV)		29459
	INSURER C : Hartford Casualty Insurance Company A+ (XV)		29424
	INSURER D : Hartford Accident and Indemnity Company A+ (XV)		22357
	INSURER E : Continental Casualty Company (CNA) A, XV		20443
INSURER F :			

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 <input checked="" type="checkbox"/> Contractual Liab. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			42UUNOL5238	10/23/2021	10/23/2022	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	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	10/23/2021	10/23/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<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	10/23/2021	10/23/2022	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y / N N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	42WBOL6H3F	10/23/2021	10/23/2022	<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
E	Professional Liab.			AEH008214422	10/23/2021	10/23/2022	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: On-call Services for Plan and Plat Review and Water and Wastewater Modeling

CERTIFICATE HOLDER

CANCELLATION

City of Tomball, TX 501 James Street Tomball, TX 77375	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE