

**AGREEMENT FOR PROFESSIONAL SERVICES**

STATE OF TEXAS §  
COUNTY OF TARRANT §

This AGREEMENT is entered into by the City of North Richland Hills, hereinafter called "OWNER" 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: OWNER agrees to employ FNI; FNI agrees to perform professional services in connection with the Project; OWNER agrees to pay to FNI compensation. The Project is described as follows: **Walker Branch Interceptor**, as identified in the City's Wastewater Master Plan (refer to Exhibit A).
- 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 OWNER which is attached to and made a part of this AGREEMENT.
- III. **COMPENSATION:** OWNER agrees to pay FNI for all professional services rendered under this AGREEMENT in accordance with Attachment CO - Compensation which is attached hereto and made a part of this AGREEMENT. FNI shall perform professional services as outlined in the "Scope of Services" for a lump sum fee of Three Hundred Twenty-Seven Thousand Four Hundred Forty-Six Dollars (\$327,446.00) for Basic Services and Eighty-Nine Thousand Seventy-Nine Dollars (\$89,079.00) for Special Services. Details concerning the fee are included in Attachment CO.  
  
If FNI's services are delayed or suspended by OWNER, 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 shall govern the relationship between the OWNER and FNI.

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

This AGREEMENT constitutes the entire AGREEMENT between OWNER and FNI and supersedes all prior written or oral understandings.

This contract is executed in two counterparts.

IN TESTIMONY HEREOF, they have executed this AGREEMENT, the \_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST:

**City of North Richland Hills**  
(OWNER)


\_\_\_\_\_

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

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

ATTEST:

**Freese and Nichols, Inc.**  
(FNI)

  
\_\_\_\_\_

By: Nicholas Lester  
\_\_\_\_\_

Nicholas Lester  
\_\_\_\_\_  
Print Name and Title

ARTICLE I

**BASIC SERVICES:** FNI shall render the following professional services in connection with the development of the Project, on a lump sum basis:

A. TASK I – PROJECT MANAGEMENT

- (1) Plan and participate in a PROJECT kick-off meeting with CITY to confirm PROJECT scope, team, lines of communication, and schedule;
- (2) Plan and participate in up to four (4) progress meetings and two (2) site meetings to facilitate PROJECT coordination, timeliness, and budget compliance. Prepare meeting summary (meeting minutes) and distribute to participants;
- (3) Develop a work plan and PROJECT task schedule;
- (4) Prepare and provide monthly progress/status reports to the CITY sufficient to support monthly billings. Monthly status reports shall be submitted with monthly invoices and shall include the latest opinion of probable construction cost (OPCC), estimated final design completion date, estimated bid date, estimated construction date, and PROJECT updates;
- (5) Review existing materials and reports, including those obtained from the CITY, and perform field investigations to establish the final interceptor alignment. The data reviewed will be used in the development of the PROJECT documents, and will include but not be limited to the following:
  - (a) Preliminary design reports;
  - (b) Available wastewater flow model;
  - (c) CITY pipeline numbering system and Geographic Information Systems (GIS) mapping;
  - (d) CITY standard details, specifications, and design manuals and guidelines;
  - (e) Property ownership and tax plat information;
  - (f) Existing survey data;
  - (g) Existing wastewater closed-circuit television (CCTV) and sonar inspection data, field logs, and reports, if available;
  - (h) Existing water, wastewater, storm drainage, and paving record drawings;
- (6) Contact and coordinate with franchise utility companies to inform them of the PROJECT, update record information, coordinate survey and base mapping information, identify possible conflicts, and establish critical issues for design, PROJECT schedule, and construction. Note areas for potential conflict of lines to be resolved during surveying and design;

- (7) Perform project management duties including sub-consultant management and coordination; and
- (8) Assist the CITY in the preparation of documents for council meetings for this PROJECT. Items may include but not be limited to:
  - (a) Presentation slides;
  - (b) PROJECT site photos.

B. TASK II – TOPOGRAPHIC SURVEY

- (1) Provide ground surveying services to obtain all field information needed for design of the PROJECT, based on approximately 9,500 linear feet (LF) of pipeline;
- (2) Prepare permit-to-survey letters, for up to fifteen (15) properties, and obtain permission from the owner of each affected property to perform necessary surveys. If property owners do not respond to the initial letter, ENGINEER shall attempt to make contact with landowners by other means, and send a follow-up request letter via certified U.S. Mail, return receipt requested. ENGINEER shall furnish the return receipt to the CITY as evidence of its compliance with this paragraph, if requested;
- (3) Establish horizontal and vertical controls for the PROJECT. The horizontal control shall be based on the Texas State Plane Coordinate System, North Central Zone North American Datum NAD-83 Coordinates and the vertical control being based on North American Vertical Datum NAVD-88. Provide survey notes on design drawings and electronic files with clear location and description of benchmarks and horizontal control points. Benchmarks shall be documented and retraceable;
- (4) Prepare planimetric detail based on the ground survey showing existing visible elements within 30 feet (minimum) of either side of the existing/proposed utility easement including, but not limited to, the following:
  - (a) Existing pavement, curbs, sidewalks, barrier free ramps, and similar objects;
  - (b) Lane striping;
  - (c) Driveways;
  - (d) Existing storm sewer inlets, manholes, junction boxes, outfalls, and erosion control;
  - (e) Alignment of existing gas pipelines and gas line easements;
  - (f) Culverts and bridges;
  - (g) Railroads;
  - (h) Guardrails;
  - (i) Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities;
  - (j) Traffic signal poles, cabinets, and other signal equipment;
  - (k) Signs, excluding temporary signs;

- (l) Trees, including diameter and species;
  - (m) Buildings;
  - (n) Retaining walls;
  - (o) Fence limits and material types;
  - (p) Flowlines of creeks;
  - (q) Flowlines of manholes, inlets, culverts, and other utility structures;
  - (r) Property corners;
  - (s) Field sketches of manholes and meter stations;
  - (t) Other applicable physical features that could impact design;
- (5) Based on the ground survey, generate one foot contours along the alignment corridor;
  - (6) Prepare composite base map of all features located in the field through the ground survey;
  - (7) Provide detail notes at each manhole inverts. The ENGINEER will provide the XYZ coordinates on existing rim, flowlines, and natural ground elevation at each manhole;
  - (8) Perform subsurface utility engineering (SUE) quality level B in general accordance with the recommended practices and procedures described in American Society of Civil Engineers (ASCE) Publication CI/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data). Utilize geophysical prospecting equipment to designate the horizontal position of existing underground utilities that are within the existing right-of-way. This level of work includes acquiring as-built documentation from utility companies and making contact with their representatives. The limits of investigation will be from ROW line to ROW line for the existing gravity sewer portion. The quality level B field findings will be surveyed and delivered in the form of a CAD base file. Quality level A, in general accordance with the same practices and procedures previously described, shall be performed for up to ten (10) locations identified during level B SUE. If additional level A pot-holes are necessary, then they will be considered an additional service;
  - (9) ENGINEER will identify existing property boundaries and easements. PROJECT pertinent property and right-of-way lines will be established from monuments found on the ground. The existing CITY easements and other electrical and gas utility easements will be shown on the survey. Findings will be submitted per CITY'S GIS Data Guidelines. The survey will locate and tie existing right-of-way, property lines, and easements including type, size, volume, and page, where applicable. Show Lot, Block, Abstract Number, and dimensions with adjacent Street Names. City and county boundaries will be shown where applicable; and
  - (10) Clear up to 9,500 LF of CITY easement (20 to 30-foot width) of tall grass and brush, as necessary to provide access for surveyor's vehicles and/or equipment to survey the project site. Any trees cleared by chain saws will be stacked clear of surveyed swath. No tree larger than six-inch caliper will be removed.

C. TASK III – ROUTE STUDY

- (1) ENGINEER will prepare a route study that evaluates up to two (2) options each for both Segment Nos. 1 and 2;
- (2) Develop preliminary pipeline plan and profiles for each option. The plan and profiles will be reviewed with the CITY and the alternatives compared to determine advantages and disadvantages of the proposed alternatives based on the profile characteristics;
- (3) Prepare preliminary OPCC for each of the alternative options. Estimate of land costs shall be furnished to the CITY;
- (4) Submit one advance copy of the draft route study, cost opinion, and associated maps to the CITY;
- (5) Prepare and participate in one route study workshop. The objective of the workshop is to present and discuss the findings of the evaluation; and
- (6) Incorporate comments from the CITY and submit four (4) copies and two (2) electronic copies (on compact disc in PDF format) of the draft route study, cost opinion and associated drawings, and submit four (4) copies and two (2) electronic copies (on compact disc in PDF format) of the final route study to the CITY.

D. TASK IV – DETAILED DESIGN

The following shall be provided for one combined set of construction documents:

- (1) ENGINEER will prepare Plans and Specifications for the PROJECT. The PROJECT is based on the preparation of plans and specifications for one (1) combined set of construction documents. Preparation of additional packages or design of a larger diameter pipeline may be requested as an additional service;
- (2) Pipeline drawings will include plan and profiles at 1-inch equal eighty (80) feet scale horizontally and 1-inch equal eight (8) feet vertically (11 x 17 size plans); right-of-way strip map; prepare general specification for Contractor's preparation of Storm Water Pollution Protection Plan and traffic control plan, if needed;
- (3) Prepare construction related permits required for the installation of the proposed pipeline, not including those permits identified during the Environmental Evaluation. Any permits required for environmental purposes (USACE, EPA, etc.) shall be considered an additional service;
- (4) Opinion of probable construction costs – ENGINEER will prepare an opinion of probable construction costs for review by the CITY following completion of the route study. This opinion will be updated for the sixty percent (60%), the ninety percent (90%), and the final (100%) quality control review meetings;

- (5) Quality control review meeting – ENGINEER will plan and participate in up to three (3) quality control review meetings with CITY personnel and other regulatory agencies. One of these meetings may require walking the alignment to resolve any special design issues. The meetings will be held at approximately the sixty percent (60%), the ninety percent (90%), and the final (100%) project completion stages. ENGINEER will provide four (4) review sets of 11 x 17 sets of plans, and four (4) review sets of specifications a minimum of ten (10) working days before the review meetings. A meeting memorandum will be prepared documenting major revisions and decisions made during each of the meetings. The meeting locations will be at the CITY'S offices; and
- (6) Submit plans and specifications and other documents to applicable regulatory agencies for approval, such as TxDOT and railroad. Environmental permits (USACE, EPA, etc.) shall be considered an additional service.

## ARTICLE II

**SPECIAL SERVICES:** FNI shall render the following professional services in connection with the development of the Project, on a cost plus max basis:

### E. TASK V – ENVIRONMENTAL EVALUATION

- (1) Gather and Review Existing Information – Prior to conducting a pedestrian survey along the proposed sanitary sewer alignment, FNI environmental scientists will assemble and review data such as aerial photographs, USGS topographic maps, National Wetlands Inventory (NWI) maps, the USGS National Hydrography Dataset (NHD), and soils data within the proposed project area;
- (2) Conduct Pedestrian Survey - FNI environmental scientists will conduct a site visit to make observations along the alignment to document existing environmental conditions and assess potential permitting requirements. The presence and locations of waters of the U.S., including wetlands; potential threatened/endangered species habitat; protected trees; and vegetation cover types will be identified in the proposed project area;
- (3) Coordinate with Project Engineers - Utilizing information gathered during the pedestrian survey, FNI environmental scientists will coordinate with the project engineers to evaluate environmental permitting constraints associated with development of the project; and
- (4) Prepare Technical Memorandum - Based on information gathered during the pedestrian survey and coordination with project engineers, a draft technical memorandum will be prepared documenting potential local, state, and federal permitting requirements for development of the project. The draft technical memorandum will be submitted to the City for review and comment. After incorporating City's comments into the document, FNI will submit a final technical memorandum to the City.

F. TASK VI – GEOTECHNICAL INVESTIGATION

- (1) Provide for and coordinate geotechnical investigation required for design of the PROJECT;
- (2) Drill, classify, and perform pertinent tests on soils at up to ten (10) locations. All borings will be to a depth of at least thirty (30) feet below existing grade. Geotechnical testing will be performed to provide design data and recommendations for excavation techniques, structural elements and any bores associated with the PROJECT. If number of borings required exceeds the stated amount, additional compensation may be requested as an additional service.

All geotechnical borings will be within right-of-way or City-owned property (parks and trails). Coordination with private property owners is not anticipated, and is therefore considered an additional service; and

- (3) Prepare a report containing recommendations regarding surface conditions, soil and geologic conditions along proposed pipeline alignment, excavation considerations, and anticipated settlement, compaction, fill and trench protection requirements. Provide two (2) copies of geotechnical investigation summary report and one (1) electronic copy of report for CITY'S records, in PDF format. ENGINEER shall include soil boring information in the Contract Documents. The final geotechnical report shall be offered to interested contractors during advertising and bidding.

G. TASK VII – EASEMENT LEGAL DESCRIPTION AND EXHIBIT PREPARATION

- (1) Provide ownership research and obtain copies of deeds, easements, subdivision plats, and right-of-way maps as required to establish the existing interests in property necessary to the construction of the PROJECT;
- (2) Establish the location of existing easements and property lines;
- (3) Prepare legal descriptions and exhibits for up to fifteen (15) permanent easements, and fifteen (15) temporary construction easements. The legal descriptions and exhibits shall be prepared in accordance with the CITY'S standards. If additional easements are required for the PROJECT, and/or staking of the easement locations are requested, they shall be considered an additional service;
- (4) Prepare each parcel plat map with no less than two X/Y coordinates defined on the Texas State Plane Coordinate System, North Central Zone NAD 83 Coordinates;
- (5) Prepare a right-of-way strip map at 1"=100' horizontal scale to be included in the PROJECT plans. The right-of-way strip map shall include parcel number, ownership, type of easement, area, bearings and distances; and
- (6) Participate in up to two (2) half-day coordination meetings with the CITY, landowners, TxDOT, or other parties as directed by the CITY during the land acquisition process.

H. TASK VIII – CONSTRUCTION ADVERTISEMENT AND BIDDING

The following shall be provided for one combined set of construction documents:

- (1) Advertise the PROJECT – provide a Notice to Bidders to the CITY for publication for the PROJECT. Send advertisements to potential bidders and suppliers. Provide documents to local plan rooms to assist in advertisement of the PROJECT;
- (2) Distribute bidding documents – ENGINEER will provide the CITY with up to ten (10) 11 x 17 sets of plans and ten (10) sets of specifications, and two (2) addenda, if applicable. ENGINEER shall maintain a list of Plan Holders. Provide the Plan Holder list to prospective bidders. Include the list of plan holders with any addenda distributed for the PROJECT;
- (3) Information to bidders – respond to questions related to the distribution of documents, construction contract provisions, and bidding requirements and technical questions regarding the PROJECT;
- (4) Addenda – prepare, print, and distribute addenda addressing additions, deletions, modifications, or interpretations to the contract documents;
- (5) Pre-bid conferences – conduct one (1) pre-bid conference for the construction PROJECT, and prepare minutes and responses. Responses to the pre-bid conference will be in the form of addenda issued after the conference. Conduct a tour of the PROJECT site after the conference;
- (6) Bid opening and evaluation – assist the CITY in receiving and recording bids at the formal bid opening. Evaluate the information contained in the bid documents for conformance with requirements of the construction contract documents. Prepare bid tabulation. Compare bid costs with estimated costs and available budget;
- (7) Evaluate contractors' qualifications and recommend award – evaluate the qualifications information provided by the contractors as a part of the bid package. Determine if the apparent low bidder appears to have the necessary experience and qualifications to successfully construct the PROJECT. Recommend award of the contract consistent with the requirements of the construction contract documents; and
- (8) Prepare contract documents for execution – assist the CITY in preparing construction documents for execution by the successful low bidder. Prepare a Notice of Award for the CITY to issue to the contractor upon award of the contract by the CITY with instructions of executed documents and bonds for conformance with the requirements of construction contract documents. Assist the CITY in reviewing executed documents and bonds for conformance with the requirements of construction contract documents. Assist the CITY in reviewing certificates of insurance for compliance with construction contract documents. Forward documents to the CITY with a recommendation of execution and distribution of documents. Those documents will include up to ten (10) 11 x 17 size conformed construction plans, ten (10) sets of executed construction specifications, and ten (10) sets of conformed construction specifications.



I. TASK IX – CONSTRUCTION PHASE SERVICES – GENERAL REP

The following shall be provided for one combined set of construction documents:

- (1) In performing services, ENGINEER will endeavor to protect the CITY against defects and deficiencies in the work of Contractors. ENGINEER will report any observed deficiencies to the CITY. However, it is understood that ENGINEER does not guarantee the Contractor's performance, nor is ENGINEER responsible for supervision of the Contractor's operation and employees. ENGINEER shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by the Contractor, or the safety precautions and programs incident to the work of the Contractor. ENGINEER shall not be responsible for the acts or omissions of any person (except his own employees or agents) at the PROJECT site or otherwise performing any of the work of the PROJECT;
- (2) Establish and monitor quality assurance procedures in accordance with the construction contract documents. Notify CITY'S designated representative of non-conforming work observed. Promptly recommend action to initiate corrective procedures for defective work, and coordinate special materials tests and performance tests needed to obtain a quality PROJECT;
- (3) Engineer shall consult with and advise the CITY during construction, and make recommendations regarding materials and workmanship;
- (4) Interpret the intent of the plans and specifications for the CITY;
- (5) Review and comment on up to six (6) monthly and final estimates for payment to Contractor, subsequent to review by the CITY'S designated representative, pursuant to the General Conditions of the Construction Contract;
- (6) Conduct and assist, in company with the CITY'S designated representative, with the PROJECT, completion activities at the conclusion of construction. Observe completed construction for general conformance with the design concept and prepare a list of deficiencies to be corrected by the Contractor before final payment is recommended. Assist the CITY in obtaining legal releases, permits, warranties, spare parts, and keys from the Contractor;
- (7) Examine the Contractor's construction record as-built drawings once a month to determine that the information appears to be recorded in an accurate and timely manner by the Contractor as required in the construction contract documents; and
- (8) If the construction period extends beyond six (6) months, the additional work required of the ENGINEER shall be considered an additional service.
- (9) Preconstruction Meetings, Site Visits and Progress Meetings – assist the CITY in conducting a preconstruction conference with the Contractor(s), prepare conference meeting minutes, review the PROJECT'S construction schedules prepared by the Contractor pursuant to the requirements of the construction contract, and review an estimate of monthly cash flow requirements for the PROJECT prepared by the Contractor. The ENGINEER will make six (6) site visits, generally monthly, during the construction of the improvements, and a total of six (6) additional site visits due to special conditions that develop during construction. The length of construction period is anticipated to be a period of six (6) months. Throughout the construction phase of the PROJECT, the ENGINEER

will attend monthly progress meetings, provide support for the CITY'S designated representative, observe the progress and the quality of work, and attempt to determine in general if the work is proceeding in accordance with the contract documents. The ENGINEER will provide meeting minutes, field notes and supplemental instructions. If ENGINEER is requested to visit the site more than specified, is requested to observe material tests, is requested to observe tests pertaining to the proper construction of the infrastructure, or if the construction period runs longer than originally estimated, the requested visits in excess of the number specified shall be considered an additional.

- (10) Review of Contractor's Submittals – review samples, catalog data, schedules, shop drawings, modification requests, and other submittals in accordance with the requirements of the construction contract documents for the PROJECT. Monitor the progress of the Contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules. Produce monthly reports indicating the status of all submittals in the review process. It is anticipated that the ENGINEER will review and respond to up to a total of twenty-five (25) shop drawing submittals. If the shop drawing submittals are more than the specified number, and it is authorized, they shall be considered an additional service. Review quality related documents provided by the Contractor such as laboratory, shop and mill tests of material and test equipment, equipment installation report, and other data and documentation as required by the construction contract documents.
- (11) Review Contractor's Requests for Information – Review the Contractor's Requests for Information (RFI) and prepare a response in accordance with the construction contract documents. Provide interpretation and communicate intent if information is not explicitly addressed in the construction contract documents. It is anticipated that the ENGINEER will review and respond to up to a total of ten (10) RFIs. If the RFIs are more than the specified number, and it is authorized, they shall be considered an additional service. Investigations, analyses, and studies requested by the Contractor and approved by the CITY, for substitutions of equipment and/or materials or deviations from the plans and specifications will be considered an additional service.
- (12) Preparation of Field/Change Orders – The ENGINEER shall establish procedures for administering changes to the construction contract documents. Assist CITY'S designated representative in processing contract modifications and in the negotiations with the Contractor to determine the cost and time impacts of these changes. Review up to two (2) Contract Modification Requests / Proposed Contract Modifications (CMR/PCM). Prepare up to two (2) Change Orders (CO) and up to two (2) Field Orders (FO) for execution by the CITY. If the review of CMRs/PCMs or the preparation of COs/FOs is more than the specified number, and if authorized, they shall be considered an additional service.
- (13) Preparation of Record Drawings - The ENGINEER shall revise the construction drawings in accordance with the information furnished by Contractor(s), reflecting changes made during construction of the PROJECT including the following items:
  - (a) Pipe's interior diameter, material, manufacturer, and stiffness;
  - (b) Limits on steel casing and/or concrete encasement;
  - (c) Method and limits of construction;
  - (d) Manhole/structure's type, manufacturer, material, riser interior diameter, and interior coating installed;

- (e) Pipe embedment detail;
- (f) Hydraulic information including pipe's gradient, design flow used, and pipe's capacity;
- (g) Original station numbers of existing manholes, including labeling those on parallel pipelines;

ENGINEER shall organize and participate in a record drawings review workshop with CITY personnel prior to finalizing record drawings. The ENGINEER shall provide the CITY with one (1) 11 x 17 Mylar set of record drawings, one (1) 11 x 17 unbound bond set of record drawings, four (4) 11 x 17 bond sets of record drawings, and two (2) copies of the record drawings on compact disc. ENGINEER shall provide electronic files of the record drawings in formats suitable to the CITY.

J. TASK X – CONSTRUCTION CONTROL STAKING

The following shall be provided for one combined set of construction documents:

- (1) Provide horizontal control points, including offsets and vertical control benchmarks to be used by the construction contractors in laying out the PROJECT. Field stake, with stake lath and flagging, the centerline of the proposed interceptor sewer at 500 foot intervals. Field staking will be performed one time. Contractor will be responsible for re-staking any points that are disturbed after initial staking by the ENGINEER;
- (2) Provide survey notes with clear location descriptions of benchmarks and horizontal control points. Benchmarks shall be permanent (nails in trees are not acceptable);
- (3) The requirements for this task are based on the survey of approximately 9,500 linear feet of pipelines.

ARTICLE III

**ADDITIONAL SERVICES:** Additional Services to be performed by FNI, if authorized in writing by OWNER's authorized representative, which are not included in the above described basic services, are described as follows:

- (1) Prepare to serve or serve as an expert witness on behalf of the CITY in connection with any public hearings or legal proceedings;
- (2) Perform manhole and/or pipeline condition assessments, including video inspection and/or pipeline cleaning;
- (3) Post construction survey;
- (4) On-the-Ground flagging of easements;
- (5) Prepare legal descriptions and plats beyond the number previously stated;
- (6) Perform geotechnical assessments to determine soil, water table, or trenching characteristics beyond the number previously stated;

- (7) Furnish construction plans and specifications in excess of those sets previously stated;
- (8) Complete redrawing of construction plan sheets, if required as a result of changes made in the scope of the construction contract after submission of final plans to the CITY;
- (9) Observe on-site conditions to evaluate exposed conditions, dewatering techniques, or changed conditions;
- (10) Land acquisition services, included but not limited to preparing appraisals, negotiations, etc.;
- (11) Prepare any environmental permits (USACE, EPA, etc.);
- (12) Separating the project into two or more sets of construction documents;
- (13) Preparation of a pre-construction notification (PCN) or an individual Section 404 permit application;
- (14) Preparation of a mitigation plan for impacts to waters of the U.S. or other natural resources;
- (15) Conducting an archeological survey;
- (16) Conducting a formal habitat evaluation (e.g., HEP/WHAP) along the proposed pipeline alignments;
- (17) Conducting a condition assessment (e.g., TXRAM) on waters of the U.S. potentially impacted by the proposed project;
- (18) Presence/absence surveys for federally listed threatened/endangered species;
- (19) Conducting a tree survey;
- (20) Application for General Land Office Easement.
- (21) Consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act;
- (22) Other environmental services not specifically defined in this scope of services; and
- (23) Provide any other services otherwise excluded in this AGREEMENT but customarily furnished in accordance with generally accepted engineering practices.

#### 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 within nine (9) months of notice to proceed.

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 OWNER 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 OWNER:** OWNER 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 OWNER'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 OWNER's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to OWNER'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 OWNER will require to be included in the drawings and specifications.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to 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 OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- F. Give prompt written notice to FNI whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services.
- G. Furnish, or direct FNI to provide, Special or Additional Services as stipulated in Attachment SC, Articles II and III of this AGREEMENT or other services as required.

ARTICLE VI

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

Owner's Designated Representative

Mike Curtis  
7200 A Dick Fisher Drive South  
North Richland Hills, Texas 76180  
Phone: 817-427-6460  
Fax:  
E-mail: [jcates@nrhtx.com](mailto:jcates@nrhtx.com)

Owner's Accounting Representative

Name:  
Address:  
  
Phone:  
Fax:  
E-mail:

FNI's Project Manager

Robb Otey  
4055 International Plaza, Suite 200  
Fort Worth, Texas 76109  
Phone: 817-735-7562  
Fax: 817-735-7492  
E-mail: [robb.otey@freese.com](mailto:robb.otey@freese.com)

FNI's Accounting Representative

Matt Shafer  
4055 International Plaza, Suite 200  
Fort Worth, Texas 76109  
Phone: 817-735-2238  
Fax: 817-735-7492  
E-mail: [mcs@freese.com](mailto:mcs@freese.com)

## COMPENSATION

Compensation to FNI for the Basic Services described in Attachment SC shall be the lump sum of Three Hundred Twenty-Seven Thousand Four Hundred Forty-Six Dollars (\$327,446.00). Compensation to FNI for Special Services in Attachment SC shall be computed on the basis of the Schedule of Charges, but shall not exceed Eighty-Nine Thousand Seventy-Nine Dollars (\$89,079.00). If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

### Schedule of Charges:

<u>Position</u>	<u>Min</u>	<u>Max</u>
Professional - 1	73	124
Professional - 2	94	153
Professional - 3	115	184
Professional - 4	150	211
Professional - 5	185	260
Professional - 6	156	360
Construction Manager - 1	93	102
Construction Manager - 2	111	158
Construction Manager - 3	147	179
Construction Manager - 4	118	238
CAD Technician/Designer - 1	62	106
CAD Technician/Designer - 2	90	133
CAD Technician/Designer - 3	120	177
Corporate Project Support - 1	43	105
Corporate Project Support - 2	70	185
Corporate Project Support - 3	86	327
Intern/ Coop	36	60

### Rates for In-House Services

#### Technology Charge

\$8.50 per hour

#### Bulk Printing and Reproduction

	<u>B&amp;W</u>	<u>Color</u>
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	

#### Travel

Standard IRS Rates

### **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 2016.**

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**TERMS AND CONDITIONS OF AGREEMENT**

- 1. **DEFINITIONS:** The term Owner as used herein refers to City of North Richland Hills, Texas. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents; also its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by Freese and Nichols pursuant to the AGREEMENT.
- 2. **CHANGES:** Owner, without invalidating the AGREEMENT, may order changes within the general scope of the WORK required by the AGREEMENT by altering, adding to and/or deducting from the WORK to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, or the time required for, the performance of any part of the Services under the AGREEMENT, an equitable adjustment will be made by mutual agreement and the AGREEMENT modified in writing accordingly.
- 3. **TERMINATION:** The obligation to provide services under this AGREEMENT may be terminated by either party upon ten 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.
- 4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors 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 the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
- 5. **INFORMATION FURNISHED BY OWNER:** Owner 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 Owner. FNI shall disclose to Owner, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by Owner to FNI that FNI may reasonably discover in its review and inspection therefor and, following such notification, FNI shall not rely on said information furnished by Owner.
- 6. **INSURANCE:** FNI shall provide to Owner certificates of insurance which shall contain the following minimum coverage (All limits in thousands):

<b>Commercial General Liability</b>		<b>Workers' Compensation</b>	
General Aggregate	\$2,000	Each Accident	\$500
<b>Automobile Liability (Any Auto)</b>		<b>Professional Liability</b>	
CSL	\$1,000	\$3,000 Annual Aggregate	

- 7. **SUBCONTRACTS:** If, for any reason, at any time during the progress of providing Services, Owner determines that any subcontractor for FNI is incompetent or undesirable, Owner will 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 Owner.
- 8. **INDEMNITY:** FNI does hereby covenant and agree to release, indemnify and hold harmless Owner, and its officials, officers, agents, representatives, employees, and invitees from and against any and all liability, claims, suits, demands and/or causes of action, (including, but not limited to, attorney's fees and cost of litigation), which may arise by reason of death or injury to property or persons but only to the extent occasioned by any error, omission or negligent act of FNI, its officials, officers, agents, employees, invitees or other persons for whom FNI is legally liable with regard to the performance of this Contract, and FNI will, at its own cost and expense, defend and protect Owner against any and all such claims and demands
- 9. **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 the Owner upon payment of FNI's fees for services. FNI may retain copies for record purposes. Owner agrees such documents are not intended or represented to be suitable for reuse by Owner or others. Any reuse by Owner or by those who obtained said documents from Owner without written verification or adaptation by FNI will be at Owner's risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. 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 Owner, and FNI shall indemnify and hold harmless Owner from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.



10. **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 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.
11. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, 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 their prices.
12. **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 Contract Documents. In performing these services, FNI will endeavor to protect Owner against defects and deficiencies in the work of Contractors; FNI will report any observed deficiencies to Owner, 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 means, methods, techniques, sequences or procedures of construction selected by the Contractor, 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 his own employees or agent) at the Project site or otherwise performing any of the work of the Project. If Owner designates a person to serve in the capacity of Resident Project Representative who is not a FNI's employee or FNI's agent, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in writing and made a part of this AGREEMENT before the Construction Phase of the Project begins.
13. **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 Owner and in acceptance of the services as satisfactory by the Owner. Statements for services shall not be submitted more frequently than monthly. Any applicable new 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 Owner fails to make any payment due FNI for services and expenses within forty-five (45) days after receipt of FNI's statement for services therefore, the amounts due FNI will be increased at the rate of one percent (1%) per month from said forty-fifth (45th) day, and, in addition, FNI may, after giving seven (7) days' written notice to Owner, suspend services under this AGREEMENT until FNI has been paid in full, all amounts due for services, expenses and charges.

14. **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.
15. **SUCCESSORS AND ASSIGNMENTS:** Owner and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and FNI 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 Owner 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.

16. **PURCHASE ORDERS:** If a Purchase Order is used to authorize FNI's Services, only the terms, conditions/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 shall be determinative of the conflict.

17. **EQUAL EMPLOYMENT OPPORTUNITY:** FNI shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. FNI shall take actions to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to the following: employment, promotions, demotions, transfers, recruitment or recruitment advertising, layoffs, terminations, selection for training (including apprenticeships), and participation in recreational activities.
18. **FNI's REPRESENTATIONS:** FNI hereby represents, promises and warrants to Owner that FNI is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder and that FNI has visited the site for the Project and thoroughly familiarized itself with visible site conditions under which the services required hereunder are to be performed.
19. **PROMPT PERFORMANCE BY FNI:** All services provided by FNI hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent engineer's in the State of Texas applicable to such services on the type of Project contemplated by this Agreement, and FNI shall be responsible for all services provided hereunder whether such services are provided directly by FNI or by any subcontractor hired by FNI. FNI shall perform all duties and services and make all decisions called for hereunder promptly and without unreasonable delay and will give this Project such priority as is necessary to cause FNI's services hereunder to be timely and properly performed.
20. **LEGAL CONSTRUCTION:** In case any one or more of the provisions contained in the Agreement shall be for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been included.
21. **GOVERNING LAW AND VENU:** The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties hereunder, shall be governed by and construed in accordance with Texas law. Venue shall lie in Tarrant County, Texas.
22. **COUNTERPARTS:** The Agreement may be signed in counterparts, each of which shall be deemed to be an original.
23. **WAIVER:** Notwithstanding any provision to the contrary, the Owner does not waive any rights or obligations it may have, either at common law or by statute, through this Agreement or any other agreement with FNI. In no event shall the making by Owner of any payment to FNI constitute or be construed as a waiver by Owner of any breach of covenant, or any default which may exist on the part of the FNI.
24. **INDEPENDENT CONTRACTOR:** FNI shall perform services hereunder as an independent contractor, and not as an officer, agent, servant or employee of the Owner and FNI shall have the exclusive right to control services performed hereunder by FNI, and all persons performing same, and shall be responsible for the negligent acts and omissions of its officers, agents, employees and sub-consultants. Nothing herein shall be construed as creating a partnership or joint venture between Owner and FNI, its officers, agents, employees and sub-consultants; and the doctrine of respondeat superior has no application as between Owner and FNI.

