

April 25, 2024

Item No. 9.2.

Wells Nos. 10, 11, and 12 and Collection Line Design Contract

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a professional services contract with Freese & Nichols, Inc. for \$8,416,603 for Wells Nos. 10, 11, and 12 and a collection line for design and construction phase services, and a resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Relationship to Strategic Goals:

Core services and infrastructure.

Recommendation(s): Staff recommends approval of this contract and recommends approval of the resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Summary: This project includes the design on wells nos. 10, 11, and 12 as well as an associated water collection line. This contract would also provide construction phase services for the construction of the wells and the collection line.

The City of College Station received two Statements of Qualifications (SOQ) that were submitted. After the review process, Freese & Nichols, Inc. was selected as the most qualified firm for the project.

Budget & Financial Summary: A combined budget of \$17,250,000 is included in the Water Capital Improvement Projects Fund for this project. A combined total of \$2,966 has been spent or committed to date, leaving a combined balance of \$17,247,034 for this contract and related costs.

The “Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt” is necessary for this project because all of the long-term debt projected to be issued for this project has not yet been issued. The debt for the project is scheduled to be issued at a later date.

Attachments:

1. Contract
2. New Wells and Collection Line DRR
3. New Wells Project Location Map



CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300457 PROJECT #: WA2400 BID/RFP/RFQ#: 24-025

Project Name / Contract Description: Wells 10, 11, 12 and Collection Line / Design Contract

Name of Contractor: Freese & Nichols, Inc.

CONTRACT TOTAL VALUE: \$ 8,416,603.00 Grant Funded Yes No
If yes, what is the grant number:

Debarment Check Yes No N/A Davis Bacon Wages Used Yes No N/A
Section 3 Plan Incl. Yes No N/A Buy America Required Yes No N/A
Transparency Report Yes No N/A

NEW CONTRACT RENEWAL # _____ CHANGE ORDER # _____ OTHER _____

BUDGETARY AND FINANCIAL INFORMATION (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)
A combined budget of \$17,250,000 is included in the Water Capital Improvement Projects Fund. A combined total of \$2,966 has been spent or committed to date, leaving a combined balance of \$17,247,034 for this contract and related costs.

(If required)*
CRC Approval Date*: N/A Council Approval Date*: 04/25/24 Agenda Item No*: _____

--Section to be completed by Risk, Purchasing or City Secretary's Office Only--

Insurance Certificates: _____ Performance Bond: N/A Payment Bond: N/A Info Tech: N/A

SIGNATURES RECOMMENDING APPROVAL

_____ DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT	_____ DATE
_____ ASST CITY MGR – CFO	_____ DATE
_____ LEGAL DEPARTMENT	_____ DATE

APPROVED & EXECUTED

_____ CITY MANAGER	_____ DATE
<u>N/A</u>	
_____ MAYOR (if applicable)	_____ DATE
<u>N/A</u>	
_____ CITY SECRETARY (if applicable)	_____ DATE

**CITY OF COLLEGE STATION
PROFESSIONAL SERVICES CONTRACT
(REGARDING CONSTRUCTION MANAGER AT RISK PROJECT)**

This Contract (“Contract” or “Agreement”) is between the **City of College Station**, a Texas home-rule municipal corporation, (the “City”) and **FREESE AND NICHOLS, INC.**, a Texas (the “Consultant”), whereby the Consultant agrees to provide the City with certain professional services as described herein and the City agrees to pay the Consultant for those services.

**ARTICLE I
Scope of Services**

1.01 In consideration of the compensation stated in paragraph 2.01 hereinbelow, the Consultant agrees to provide the City with the professional services as described in **Exhibit “A”**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows: Project programming, preparing schematics, design development, preparing construction documents and construction administration for:the design contract located at _Wells 10, 11, 12 and Collection line for the City of College Station, Texas (the “Project”).

1.02 As used in this Contract unless otherwise designated (and whether the term or phrase appears in capital letters, quotations, or bold or italicized print): (a) **“City”** means the City of College Station, Texas, a Texas home-rule municipality, including its elected officials (including its City Council), appointed officials, employees, agents and consultants (other than the Consultant and the Construction Manager), volunteers, assigns, and successors in interest; (b) **“Construction Manager”** means a Construction Manager at Risk as described in this Contract; (c) **“Consultant”** means the Texas licensed architect or Texas architectural firm and/or the Texas licensed engineer or engineering firm which sign this Contract as a Party providing the herein described professional services for the Project, including their directors, partners, officers, members, managers, employees, consultants or subconsultants, agents, permitted assigns, and successors in interest; (d) **“Party”** means a signing Party to this Contract; and (e) the past, present, or future tense shall each include the other, the masculine or feminine gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning. All documents attached to or referenced by this Contract are incorporated by reference for all purposes.

**ARTICLE II
Payment and Construction Cost**

2.01 In consideration of the Consultant’s provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Consultant according to the terms set forth in **Exhibit “B”**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed **Eight Million Four Hundred Sixteen Six Hundred Three and NO/100 Dollars (\$8,416,603.00)**.

2.02 Consultant’s evaluations of the City’s project budget and the preliminary estimates of

construction cost and detailed estimates of construction cost, represent the Consultant's best judgment as a design professional familiar with the construction industry.

2.03 The construction budget for this Project, which is established as a condition of this Contract is \$10,000,000.00. This construction budget shall not be exceeded unless the amount is changed in writing by the City.

ARTICLE III Time of Performance

3.01 The Consultant shall perform with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. The Consultant shall perform all professional services necessary for the complete design and construction documentation of the Project within the times set forth below and in Section 3.02. Consultant expressly agrees that such times are as expeditious as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

(a) **Conceptual Design:** 0 calendar days after the authorization to commence planning.

(b) **Preliminary Design:** 150 calendar days after authorization to commence development.

(c) **Final Design:** 390 calendar days after authorization to commence final design.

3.02 All design work and other professional services provided under this Contract must be completed by the following date(s): March 30, 2029.

3.03 Time is of the essence of this Contract. The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified. Promptly after the execution of this Contract, the Consultant shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Consultant's services to meet the City's project milestone dates which are included in this Contract. The Consultant's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule, over which Consultant has control and agrees are as expeditious as are prudent considering the ordinary professional skill and care of a competent engineer or architect, shall not be exceeded without written approval from the City.

3.04 The Consultant's services for the Project shall consist of all the services required to be performed by Consultant, Consultant's employees and Consultant's consultants under the terms of this Contract. Such services include: (a) normal or basic civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services; (b) any other design services that are normally or customarily furnished and reasonably necessary for the Project; (c) (i) schematic (or conceptual) design phase services, (ii) design development phase services, (iii) construction document phase services, (iv) procurement phase services, (v) construction phase services, (vi) evaluation of work services, including the review and certification

of requests for and payments proposed to contractors or other service, equipment, or material providers, (vii) project completion services, and (viii) supplemental and/or additional services requested by the City; and (d) all other services herein described to be provided by the Consultant to the City for the Project. The Consultant shall contract and employ at its expense consultants (or subconsultants) necessary for the design of the Project, and such consultants shall be licensed as required by the State of Texas and approved in writing by the City.

3.05 The Consultant shall designate a principal of the firm satisfactory to the City who shall, so long as employed by Consultant and acceptable to the City, remain in charge of professional services through completion and be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.

3.06 Consultant shall be responsible for the coordination of its services with those of its subconsultants, the City, and the City's consultants, including the coordination of all drawings and design documents relating to Consultant's design and used on the Project, regardless of whether such drawings and documents are prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for their compliance with all applicable state, federal, or local (including the City) codes, ordinances, regulations, laws and statutes. Upon receipt from the City, the Consultant shall review the services and information furnished by the City and the City's consultants for accuracy and completeness. The Consultant shall provide prompt written notice to the City if the Consultant becomes aware of any error, omission or inconsistency in such services or information. Once notice has been provided to the City, the Consultant shall not proceed without written instruction from the City to do so.

ARTICLE IV Conceptual Design

4.01 Upon the Consultant's receipt from the City of a Letter of Authorization to commence planning, the Consultant shall meet with the City for the purpose of determining the nature of the Project. The Consultant shall inquire in writing as to the information it believes the City may have in its possession that is necessary for the Consultant's performance. The City shall provide the information within its possession that it can make available to the Consultant. The City shall designate a representative to act as the contact person on behalf of the City.

4.02 The Consultant shall determine the City's needs with regard to the Project, including, but not limited to, tests, analyses, reports, site evaluations, needs surveys, comparisons with other municipal Projects, review of budgetary constraints and other preliminary investigations necessary for the Project. Consultant shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Consultant shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Consultant shall prepare a detailed design phase schedule which includes all review and approval periods during the schematic design, design development and construction document phases. Consultant shall confirm that the Project can be designed and constructed for the dollar amount of the project budget, if applicable.

4.03 The Consultant shall prepare a Conceptual Design that shall include schematic layouts, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The Consultant shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the City’s Program, the Project Schedule and budget. The Consultant shall reach an understanding with the City regarding the requirements of the Project. The Conceptual Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City’s request, the Consultant shall meet with City staff and the City Council to make a presentation of its report.

ARTICLE V
Preliminary Design

5.01 The City shall direct the Consultant to commence work on the Preliminary Design by sending to the Consultant a “letter of authorization” to begin work on the Preliminary Design pursuant to this Contract. Upon receipt of the Letter of Authorization to commence Preliminary Design, the Consultant shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.

5.02 The Consultant shall prepare the Preliminary Design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Consultant shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate both the cost of each category of work involved in constructing the Project and the time required for construction of the Project from commencement to final completion.

5.03 Upon completion of the Preliminary Design of the Project, the Consultant shall so notify the City. Upon request the Consultant shall meet with the City staff and City Council to make a presentation of its Preliminary Design of the Project. The Consultant shall provide an explanation of the Preliminary Design including any material changes and deviations that have taken place from the Conceptual Design cost estimate, and shall verify that, to the best of Consultant’s belief, the Project requirements and construction can be completed within the project budget and schedule.

ARTICLE VI
Final Design

6.01 The City shall direct the Consultant to commence work on the Final Design of the Project by sending to the Consultant a “letter of authorization” to begin work on the final design phase of the Project. Upon receipt of the Letter of Authorization to proceed with Final Design of the Project, the Consultant shall immediately prepare the Final Design, including, but not limited to, the contract documents, drawings, and specifications, to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The Final Design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations.

6.02 Notwithstanding the City’s approval of the Final Design, the Consultant warrants that the Final Design will be sufficient and adequate to fulfill the purposes of the Project.

6.03 The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City’s *current* pre-approved, “City of College Station Standard Form of Agreement Between City and Construction Manager at Risk” (“CMAR Agreement”) for the construction contract between the City and the Construction Manager. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City’s standard form without the prior written approval of the City. The Consultant shall assist the City with all phases of the procurement and engagement of the Construction Manager, including assistance with the review of, consultation regarding, and any proposed modifications regarding the CMAR Agreement.

6.04 The Consultant shall provide the City and Construction Manager at Risk (“CMAR”) with complete contract documents sufficient to be advertised for bids by the CMAR. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the Final Design of the Project, with the submission of the complete contract documents, and upon request of the City, the Consultant shall meet with City Staff and the City Council to present the Final Design of the Project. The Consultant shall provide an explanation of the Final Design, including identification of all material changes and deviations that have taken place from the Preliminary Design Documents and a cost estimate. The Consultant shall verify that, to the best of Consultant’s belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VII
Bid Preparations & Evaluation for Subcontractors

7.01 The Consultant shall assist the Construction Manager in advertising for and obtaining bids or negotiating proposals for the construction of the Project, in compliance with state law. Upon request, the Consultant shall meet with City Staff and the City Council to present, and make recommendations on, the bids and proposals submitted for the construction of the Project.

7.02 The Consultant shall review the Construction Manager’s bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Consultant shall evaluate each bid and provide these evaluations to the City along with a recommendation on each bid.

7.03 Where substitutions are requested by a Construction Manager, the Consultant shall review the substitution requested with the City and make a recommendation to the City to either approve or disapprove such substitution(s).

ARTICLE VIII
Construction

8.01 The Consultant shall be a representative of, and shall advise and consult with, the City **(a)** during construction, and **(b)** at the City’s direction from time to time during the correction or

warranty period described in the construction contract or CMAR Agreement. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Contract unless modified by written instrument.

8.02 The Consultant shall make visits to the Project site, to inspect the progress and quality of the executed work of the Construction Manager and its contractors and subcontractors and to determine if such work is proceeding in accordance with the contract documents. The minimum number of site visits and their frequency shall be established by the City and Consultant prior to commencement of construction. Consultant shall periodically review the as-built drawings for accuracy and completeness, and shall report its findings to the City.

8.03 The Consultant shall keep the City informed of the progress and quality of the work. The Consultant shall exercise the utmost care and diligence in discovering and promptly reporting to the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform with the contract documents.

8.04 The Consultant shall review and approve shop drawings and samples, the results of tests and inspections, and other data that the Construction Manager or subcontractor is required to provide. The Consultant's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.

8.05 The Consultant shall determine the acceptability of substitute materials and equipment that may be proposed by the Construction Manager or subcontractors. The Consultant shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the Construction Manager in accordance with the contract documents.

8.06 The Consultant shall issue all instructions of the City to the Construction Manager as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Consultant shall interpret the contract documents and judge the performance thereunder by the contractor constructing the Project, and Consultant shall, within a reasonable time, but not later than twenty (20) calendar days after a written request, render such interpretations and clarifications in writing as it may deem necessary for the proper execution and progress of the Work. Consultant shall receive no additional compensation for providing clarification of the Drawings and Specifications.

8.07 The Consultant shall review the amounts owing to the Construction Manager and recommend to the City, in writing, payments to the Construction Manager of such amounts. The Consultant's recommendation of payment, being based upon the Consultant's on-site inspections and its experience and qualifications as a design professional, shall constitute a recommendation by the Consultant to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Consultant's recommendation for payment.

8.08 Upon notification from the Construction Manager that the Project is substantially complete,

the Consultant shall conduct an inspection of the site to determine if the Project is substantially complete. The Consultant shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the Construction Manager that the checklist items designated by the Consultant for completion have been completed, the Consultant shall inspect the Project site to verify final completion.

8.09 The Consultant shall not be responsible for the work of the Construction Manager or any of its subcontractors, except that the Consultant shall be responsible for the Construction Manager's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Consultant's negligent acts or omissions. This provision shall not alter the Consultant's duties to the City arising from the performance of the Consultant's obligations under this Contract.

8.10 The Consultant shall conduct at least two on-site inspections during the warranty period and shall report to the City as to the continued acceptability of the work.

8.11 The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project without an advance, written authorization from the City.

8.12 The Consultant shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.

8.13 The Consultant shall assist the Construction Manager and City in obtaining an Occupancy Permit by accompanying governing officials during inspections of the Project if requested to do so by the City.

8.14 The Standard Form of Agreement between City and Construction Manager at Risk is attached hereto as **Exhibit "D"** and incorporated herein by reference. The Consultant shall comply with all terms and conditions pertaining to the Architect as set out in the final and executed version of said agreement. In the event of an inconsistency between a term or condition in this Contract and the agreement between City and Construction Manager at Risk, the agreement between City and Construction Manager at Risk shall control.

ARTICLE IX

Change Orders, Documents & Materials

9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid except upon the prior written order from authorized City personnel. The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project.

9.02 When the original Contract amount plus all change orders is less than \$100,000, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$100,000. For such contracts, when a change order results in a total contract amount that exceeds \$100,000, the City Council of the City must approve such change order prior to commencement of the services or work.

9.03 When the original contract amount plus all change orders is equal to or greater than \$100,000, the City Manager or its designee may approve the written change order provided the change order does not exceed \$50,000, and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract amount, the City Council of the City must approve such change order prior to commencement of the services or work.

9.04 Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in Article II of this Contract shall be made and approved by the City prior to the Consultant providing such services or the right to payment for such additional services shall be waived. If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

9.05 The Consultant shall furnish the City with one (1) sets of physical hard-copy plans and specifications, and digital files of the same. It is hereby agreed that additional copies shall be provided to the City at the City's expense. The Consultant shall provide the City one (1) sets of reproducible, mylar-record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the Construction Manager to the Consultant. The Consultant shall provide copies of Work Product including documents, computer files if available, surveys, notes, and tracings used or prepared by the Consultant. The foregoing documentation, the Consultant's Work Product, and other information in the Consultant's possession concerning the Project shall be the property of the City from the time of preparation. The Consultant shall also furnish one set of digital files representing the final as-built mylars.

ARTICLE X

Warranty, Indemnification & Release

10.01 As an experienced and qualified design professional, the Consultant warrants that the information provided by the Consultant reflects the professional skill and care ordinarily provided by competent Texas engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. The Consultant warrants that the design preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of all other services under this Contract are performed with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their Work Product or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.

10.02 The Consultant shall promptly correct any defective Work Product, including designs or specifications furnished by the Consultant at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Consultant's services hereunder or of the Project itself shall in no way alter the Consultant's obligations or the City's rights hereunder.

10.03 In all activities or services performed hereunder, the Consultant is an independent contractor and not an agent or employee of the City. The Consultant and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Consultant shall be responsible for the professional services and the final Work Product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Consultant shall have ultimate control over the execution of its professional services. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subcontractors.

10.04 The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project site or any of the work being done on the site or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

10.05 Indemnity and Release. Pursuant to Section 271.904 of the Texas Local Government Code and other authority, the Parties agree as follows:

(a) The Consultant, as the indemnitor, shall indemnify, defend, and hold harmless the City against liability for all damage or liability (including all monetary damages and judgments, legal or equitable relief, costs, expenses, court costs, interest, reasonable attorney's fees, and just and lawful offsets and credits) regarding the Project to the extent that said damage or liability is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier, and committed by said indemnitor or said indemnitor's agent, consultant under contract, or another entity over which said indemnitor exercises control; however, this indemnitor obligation expressly does not apply when the damage, liability, claim or judgment is based wholly or partly on the negligence of, fault of, or breach of contract by the City, the City's employee or agent, or other person or entity over which the City exercises control.

(b) Regarding this RELEASE, the Consultant (as the Indemnitor) assumes full responsibility for the Work to be performed hereunder, and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either Party or other third Parties) and any loss of or damage to any property (whether property of either of the Parties hereto, their employees, or of third Parties) that is caused by or alleged to be caused by, arising out

of, or in connection with the work on the Project performed by the Consultant, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance. In the event of injury, death, property damage, or loss suffered by the Consultant, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall not apply when such injury, death, loss, or damage was caused in whole or in part by the intentional or willful act, negligence, or gross negligence of the City.

(c) Notwithstanding anything stated to the contrary in this Paragraph 10.05, it is required that: (a) the City shall be included as an additional insured under the Consultant's general liability insurance policy, and the Consultant shall provide any and all defenses to the City as provided by that policy; and (b) the Consultant, and a licensed engineer or registered architect performing the professional services of an engineer or architect under the Agreement on behalf of the Consultant, shall perform those professional services (i) with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing under the same or similar circumstances and professional license, and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent Texas engineer or architect.

(d) The Consultant's indemnification and release obligations in this Paragraph 10.05 shall survive termination, completion, abandonment and final payment.

10.06 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Paragraphs 10.05 and 10.06, such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.

ARTICLE XI Insurance

11.01 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, coverages, limits and endorsements required are as set forth below. During the term of this Contract all of Consultant's insurance shall meet the minimum requirements of this section.

11.02 Types. Consultant shall have the following types of insurance:

- (a) Commercial General Liability.
- (b) Business Automobile Liability.
- (c) Excess Liability.

- (d) Workers' Compensation/Employer's Liability.
- (e) Professional Liability.

11.03 General Requirements Applicable to All Policies. The following General requirements applicable to all policies shall apply:

(a) Insurance is to be placed with insurers authorized to conduct business in the state of Texas with a current A.M. Best rating of no less than A: VII, unless otherwise accepted in writing by the City. The insurance policies provided by the insurance company/companies are to be underwritten on forms that have been authorized by the Texas Department of Insurance or ISO. Original endorsements affecting coverage required by this Agreement shall be furnished with the certificates of insurance.

(b) Self-insured retentions must be declared to and approved by the City in writing. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention ("SIR") or deductible that exceeds \$25,000 unless approved in writing by City. All deductibles and SIRs shall be the sole responsibility of Consultant or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City may deduct from any amounts otherwise due Consultant to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City reserves the right to obtain a copy of any policies and endorsements.

(c) "Claims Made" policies are not accepted, except for Professional Liability.

(d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.

(e) For any claims related to this project, the Consultant's insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 01 04 13 regarding the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute to it. This requirement shall also apply to any Excess or Umbrella liability policies.

(f) Consultant hereby agrees to waive rights of subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors.

(g) Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the Work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(h) Consultant shall require and verify that all subcontractors maintain insurance meeting all requirements stated in this Agreement, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

(i) If applicable, CGL & Excess/Umbrella liability policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of five (5) years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Work and related obligations thereafter.

(j) City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

(k) The City of College Station, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the Business Automobile Liability policy, the Excess Liability/Umbrella policy, and the CGL policy, with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Consultant. The coverages shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance, at least as broad as ISO Form:

1. CG 20 10 and CG 11 85; **or**
2. **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms (if later revisions used).

11.04 Commercial (General) Liability Requirements. The following Commercial (General) Liability requirements shall apply:

(a) Minimum Limit of \$2,000,000 per occurrence for bodily injury and property damage with a \$4,000,000 annual aggregate.

(b) Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.

(c) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

(d) The coverage shall not exclude: premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), Host Liquor Liability and where exposures exist, “Explosion Collapse and Underground” (XCU) coverage.

11.05 Business Automobile Liability Requirements. The following Business Automobile Liability requirements shall apply:

(a) Coverage shall be written by a carrier rated “A:VIII” or better in accordance with the current A.M. Best Key Rating Guide.

(b) Minimum Combined Single Limit of \$2,000,000 per occurrence for bodily injury and property damage.

(c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.

(d) The coverage shall include owned, leased or rented autos, non-owned autos, any autos and hired autos.

11.06 Excess Liability. The following Excess Liability requirements shall apply:

(a) The Consultant may use Umbrella or Excess Liability Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all Primary and Umbrella or Excess Liability Policies shall provide all the insurance coverages required by this Agreement, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements.

(b) The Umbrella or Excess policies shall be provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Consultant’s primary and excess liability policies are exhausted.

11.07 Additional Insured. Those policies set forth in Paragraphs 11.04 Commercial (General) Liability, 11.05 Business Automobile Liability and 11.06 Excess Liability shall contain an endorsement listing the City as Additional Insured and further providing that the Consultant’s policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form acceptable to the City. Waiver of subrogation in a form acceptable to the City shall be provided in favor of the City on all policies obtained by the Consultant in compliance with the terms of this Agreement. Consultant shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this

Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Exhibit "C"**, and approved by the City before Work commences.

11.08 Workers' Compensation/Employer's Liability Insurance requirements. The following Workers' Compensation requirements shall apply; and whenever the term "Contractor" is used same shall be construed to refer to "Consultant" herein:

(a) Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's, or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers' Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.

(b) The worker's compensation insurance shall include the following terms:

1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
3. Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

(c) Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas Administrative Code, this Contract, the bid specifications and all subcontracts on this Project must include the terms and conditions set forth below, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project (“subcontractors” in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. “Services” include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Contractor’s current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the

statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.

11.08 Professional Liability Requirements. The following Professional Liability requirements shall apply:

- (a) Coverage shall be written by a carrier rated “A: VII” or better in accordance with the current A. M. Best Key Rating Guide.
- (b) Minimum of \$2,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$200,000.00. Financial statements shall be furnished to the City of College Station when requested.
- (c) Consultant must continuously maintain professional liability insurance with prior acts coverage for a minimum of three (3) years after completion of the Project or termination of this Contract, as may be amended and whichever occurs later. Coverage under any renewal policy form shall include a retroactive date that precedes the earlier of the effective date of this Contract or the first performance of services for the Project. The purchase of an extended discovery period or an extended reporting period on this policy will not be sufficient to comply with the obligations hereunder.
- (d) Retroactive date must be shown on certificate.

ARTICLE XII
Use of Drawings, Specifications and Other Documents

12.01 Any and all Project drawings, specifications and other documents prepared, furnished, or both prepared and furnished by Consultant or any subconsultant or other designer contracted under Consultant pursuant to this Contract (including, without limitation, the Construction Documents) (said total documents called “Work Product”), shall be the exclusive property of the City whether the Project is completed or not. Upon completion or termination of this Contract, Consultant shall promptly deliver to the City all Work Product, records, notes, data, memoranda, models, and equipment of any nature that are within Consultant’s possession or control and that are the City’s property or relate to the City or its business regarding the Project. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant’s Work Product and other aforesaid and related documents and information pertaining to the Project.

12.02 Consultant warrants to City that (i) Consultant has the full power and authority to enter into this Contract, (ii) Consultant has not previously assigned, transferred or otherwise encumbered the rights conveyed herein, (iii) Work Product is an original work of authorship created by Consultant’s employees or subconsultants during the course of their employment by Consultant, and does not infringe on any copyright, patent, trademark, trade secret, contractual right, or any other proprietary right of any person or entity, (iv) Consultant has not published the Work Product (including any derivative works) or any portion thereof outside of the United States, and (v) to the best of the Consultant’s knowledge, no other person or entity, except City, has any claim of any right, title, or interest in or to the Work Product.

12.03 Consultant shall not seek to invalidate, attack, or otherwise do anything either by act of omission or commission which might impair, violate, or infringe the title and rights assigned to City by Consultant in this Article XII of the Contract. The drawings, specifications and other documents prepared by the Consultant and Consultant’s sub-consultants for this Project shall become the property of the City whether the Project is completed or not. The City shall be

furnished and permitted to retain reproducible copies and electronic versions of Consultant's drawings, specifications and other documents.

12.04 The Project documents prepared by Consultant may be used as a prototype for other facilities by the City. The City may elect to use the Consultant to perform the site adaptation and other architectural services involved in reuse of the prototype. If so, the Consultant is obligated to perform the work for an additional compensation that will fairly compensate the Consultant and its subconsultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Contract. If the City elects to employ a different architect to perform the site adaptation and other architectural services involved in reuse of the prototype, that architect will be entitled to use Consultant's subconsultants on the same basis that Consultant would have been entitled to use them for the work on the reuse of the prototype, and such architect will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the construction documents, approved shop drawings and calculations, and change order drawings in performing its work. The Consultant will not be responsible for errors and omissions of a subsequent architect. The Consultant shall commit its sub-consultants to the terms of this subparagraph.

12.05 In the event of termination of this Contract for any reason, the City shall receive all original Project documents (as described in this Article XII) prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

12.06 Only the details of the drawings relating to this Project may be used by the Consultant on other projects, but they shall not be used as a whole without written authorization by the City. The City furnished forms, conditions, and other written documents shall not be used on other projects by the Consultant.

ARTICLE XIII

Termination and Liquidated Damages

13.01 The City may, through the exercise of its sole discretion and best business judgment, terminate this Contract, with or without cause, at any time upon **thirty (30)** calendar days written notice to the Consultant. Upon the Consultant's receipt of such notice, the Consultant shall cease work immediately. The Consultant, in the event of said termination, shall be compensated pursuant to this Agreement for the Project services satisfactorily performed prior to the termination date, provided Consultant is not in default of this Contract regarding the provision of said services.

13.02 If the Consultant commits conduct, an act, or omission which constitutes a breach or default of the Contract, the City may: (a) terminate this Contract, and if so, the Consultant will be compensated for its Contract approved Project services satisfactorily performed prior to the termination date, provided Consultant is not in default of this Contract regarding the provision of said services; and/or (b) initiate and complete litigation against the Consultant, and against all other necessary or desired Parties (including Consultant's sureties), for the City's recovery, upon the exercise of its discretion, of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages, as allowed by law and this Contract, including without limitation

Contract termination, the recovery of all actual and consequential damages, and the recovery of the City's incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits.

13.03 Regarding the application of liquidated damages, upon the exercise of the City's discretion, the Parties agree as follows:

(a) The time for the completion of all work described in this Agreement is reasonable times for the completion of each task by the agreed upon days or dates, taking into consideration all conditions, including but not limited to the usual industry conditions prevailing in this locality. The amount of liquidated damages for the Consultant's failure to meet contractual deadlines specifically set forth in the Consultant's scope of services and schedule are fixed and agreed on by the Consultant because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be deducted by the City from current amounts owed to Consultant for payment or from final payment.

(b) As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Consultant to achieve timely completion of the work, if the Consultant should neglect, or fail, or refuse to complete the work within the times specified in the Consultant's scope of services and schedule, or any proper extension thereof granted by the City's Representative pursuant to this Agreement, then the Consultant does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Consultant's total compensation the sum of **Two Hundred Fifty and 00/100 DOLLARS (\$250.00)** for each and every calendar day that the Consultant shall be in default after the time(s) stipulated for completion of the task(s) in question, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet any of the deadlines specified in the Consultant's scope of services and schedule for completion in this Agreement.

13.04 No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for all damages and recoveries sustained by the City because of any breach of this Contract committed by the Consultant in performing this Contract, or because of the intentional act, omission and/or negligence or gross negligence committed by the Consultant in performing this Contract. Notwithstanding anything to the contrary stated in this Contract, the City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages or other recoveries due the City from the Consultant are determined and paid.

ARTICLE XIV Dispute Resolution

14.01 No suit shall be filed by a Party regarding a dispute arising under or related to this Contract unless the Parties first attempt to submit the dispute to mediation pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything to the contrary stated in this Contract, however, a Party may file suit solely for injunction or mandamus relief regarding an

aforesaid dispute without first submitting that dispute to mediation. The mediation shall be held in Brazos County, Texas within 30 days of a Party sending notice to the other Party requesting mediation, unless otherwise agreed in writing by the Parties. Each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Aggie Dispute Resolution Program, Texas A&M University School of Law, 1515 Commerce Street, Fort Worth, Texas 76102-6509, ((800) 733-9529 telephone).

**ARTICLE XV
Miscellaneous Terms**

15.01 Choice of Laws and Venue. The Parties expressly agree that: (a) this Contract shall be governed and interpreted pursuant to the laws of the State of Texas; (b) the performance and work performed under this Contract for the Project shall be expressly performed in Brazos County, Texas, United States of America; and (c) venue for any lawsuit or legal proceeding regarding or relating to this Contract or Project shall be in a court of competent jurisdiction in Brazos County, Texas, United States of America, or the appropriate United States District Court designated for said county.

15.02 Notice. Written notice required under this Contract shall be deemed to have been served only if in writing and hand-delivered to the addressees and addresses set out below, or if delivered by courier or delivered by United States Postal Service mail (certified USPS mail delivery required) to that address:

CITY OF COLLEGE STATION

Attn: Casey Rhodes
P.O. Box 9960
College Station, Texas 77842

Freese and Nichols, Inc.

Attn: Richard Weatherly
11200 Broadway Street,
Office West Ste 2320
Pearland, TX 77584_

A Party may change its notice address by providing written notice to the other Party in the manner described above.

15.03 No Waiver. No action or failure to act by the City shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing. Notwithstanding anything to the contrary stated in this Contract, no waiver of a default of this Contract occurs if the non-defaulting Party fails to immediately declare a default or otherwise delays in taking any action regarding a default committed by the defaulting Party of this Contract.

15.04 Entire Agreement. This Contract with all attached exhibits and incorporated by reference documents represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This

Contract may only be amended by written instrument approved and executed by the Parties. Copies of this fully executed Contract shall be effective as the original.

15.05 Assignment. This Contract and all rights and obligations contained herein may not be assigned by the Consultant without the prior written approval of the City.

15.06 Invalidity. If any provision of this Contract shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

15.07 Prioritization. Contractor and City agree that City is a political subdivision of the State of Texas and is thus subject to certain laws. Because of this there may be documents or portions thereof added by Contractor to this Agreement as exhibits that conflict with such laws, or that conflict with the terms and conditions herein excluding the additions by Contractor. In either case, the applicable law or the applicable provision of this Agreement excluding such conflicting addition by Contractor shall prevail. The Parties understand this section comprises part of this Agreement without necessity of additional consideration.

15.08 Governmental Immunity. Notwithstanding anything to the contrary stated in this Contract, the Parties acknowledge and agree that this Contract is subject to the proper application of, and to all protections afforded to the City pursuant to, the doctrine of governmental immunity under Texas law.

15.09 Compliance with Laws. The Consultant, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of College Station, and with all applicable rules and regulations promulgated by local, state, and national governments, boards, bureaus, and agencies. The Consultant must obtain all necessary permits and licenses required in completing the services required by this Contract.

15.10 Acknowledgement. The Parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

15.11 Effective Date. The effective date of this Contract is the date the last signing Party executes this Contract.

15.12 Notice of Indemnification and Release. City and Consultant hereby acknowledge and agree that this Contract contains certain indemnification and release obligations and covenants.

15.13 Verification of No Boycott and Conflicts Disclosure. To the extent made applicable by controlling law, this Contract is subject to the following:

(a) No Boycott of Israel. Pursuant to applicable provisions of Chapter 2271 of the Texas Government Code, the Contractor verifies that it (i) does not boycott Israel, and (ii) will not boycott Israel during the term of this Agreement;

(b) No Boycott of Firearms. Pursuant to applicable provisions of Chapter 2274 of the Texas Government Code, the Contractor verifies that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (ii) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association;

(c) No Boycott of Energy Companies. Pursuant to applicable provisions of Chapter 2276 of the Texas Government Code, the Contractor verifies that it (i) does not boycott energy companies, and (ii) will not boycott energy companies during the term of this Agreement; and

(d) Conflicts Disclosure. Before the approval of this Contract, and in timely performance with the statutes hereafter described, the Contractor has submitted to the City: (i) a properly executed Form CIQ/Conflicts of Interest Questionnaire pursuant to Chapter 176 of the Texas Local Government Code and other authority; and (ii) a properly executed Form 1295/Texas Ethics Commission Certificate of Interested Parties pursuant to Section 2252.908 of the Texas Government Code.

15.14 Virtual Payment Method. For increased payment and financial information security, the Contractor must use the City's approved virtual payment card system or digital payment system for all payments, storing, and modifications of financial information used for City payments to the Contractor. Any related reasonable fees paid by the Contractor for use of the virtual payment card system or digital payment system may be passed through to the City.

15.15 Fraud Reporting. To reduce the risk of fraud and to protect the Contractor's financial information from fraud, the Contractor must report to the City in writing at VendorInvoiceEntry@cstx.gov if the Contractor reasonably suspects or knows if any of their financial information has been subject to fraudulent activity or suspected fraudulent activity.

List of Exhibits

- A. Scope of Services
- B. Payment Terms
- C. Certificates of Insurance
- D. Construction Manager at Risk Agreement

FREESE AND NICHOLS, INC.

CITY OF COLLEGE STATION

By: _____

By: _____

City Manager

Printed Name: _____

Date: _____

Title: _____

Date: _____

APPROVED:

City Attorney

Date: _____

Assistant City Manager/CFO

Date: _____

Exhibit "A"
Scope of Services

EXHIBIT A
City of College Station
Wells 10, 11, and 12
Engineering Scope of Services
April 10, 2024

Scope Narrative:

The City of College Station (CITY) desires to construct three new water supply wells and approximately 10,000 linear feet of well collection line to convey flow to the existing well collection system near Well 6 or Well 5. This agreement establishes the relationship between the CITY and Freese and Nichols (FNI) to provide engineering services for preliminary design, final design, bid, construction and startup phases of the project.

The major project components that will be included in the design, in general, include the following elements:

- Three new water supply wells, each with a permitted peak capacity of 3,300 GPM.
- Pre-fabricated electrical building to house VFDs and other electrical and control equipment, one at each well site.
- Stand-by generator with automatic transfer switch at each well site.
- Associated electrical, controls and SCADA system improvements.
- Associated yard piping and hydraulic improvements.
- Associated drainage, landscaping and paving improvements.
- Approximately 10,000 linear feet of 36" well collection piping from each well site to the existing well collection system near Well 5 or Well 6; connection location and pipe routing will be determined during the Preliminary Design Phase.
- Associated pipeline facilities, such as air release valves, manholes and isolation valves.

It is assumed that the wells and collection line will be procured using the Construction Manager at Risk (CMAR) project delivery method. Though ultimately determined by the CITY and CMAR, five bid packages are assumed for this scope of work and are anticipated to be:

- Early earth work package to construct access roads and well pads.
- Well test hole drilling.
- Electrical and pumping equipment procurement.
- Well and site construction.
- Off-site collection line construction.

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services for the development of the Project:

I. Project Management

- A. Conduct a project kick-off meeting with CITY to review project scope of services, team, communication procedures, and schedule.
- B. Conduct an internal project kick-off meeting with FNI and Subconsultants to review project scope of services, roles and responsibilities, communications procedures, and schedule.

- C. Perform general administrative duties associated with the project including progress monitoring and monthly progress reporting, scheduling, general correspondence, documentation, office administration and invoicing for the scope items identified below. Documentation shall be in accordance with any regulatory requirements for the project. These duties include maintaining routine contact with the CITY to help meet the needs of the CITY in a timely manner and executing the work in accordance with the work plan, budget and schedule.
- D. Conduct bi-weekly project progress meetings with CITY, CMAR, and FNI through the design and bid phases. One meeting per month will be in-person at CITY's offices, with the remainder being held virtually.

II. **Preliminary Design**

A. Floodplain Evaluation

- 1. Identify and obtain available hydraulic modeling for the Little Brazos River. This may be a FEMA effective model or Base Level Engineering (BLE) model. Project site is within the 100-year floodplain but there is no floodway defined. It is assumed that a CLOMR or LOMR will not be necessary for the development of the project.
- 2. Review available hydraulic model to obtain 100-yr and 500-yr water surface elevations and coordinate with design team to inform fill elevations as well as elevations for critical infrastructure.
- 3. Modify available model to reflect pre-project and post-project conditions. Coordinate with design team on approaches to minimize impacts to flood elevations along Little Brazos River.
- 4. Prepare a technical memorandum documenting the findings from the hydraulic analysis.
- 5. Coordinate project with floodplain administrator with jurisdiction within project area to obtain no objection letter. It is assumed that a CLOMR or LOMR will not be needed.

B. Site Layout

- 1. Prepare site layouts for each well site and the overall project site. Include considerations for:
 - a) Access to each well site.
 - b) On-site routing for off-site utilities, including fiber optic communications, power, and well collection pipeline.
 - c) Typical well pad layout, including water supply well, monitoring well, utility power, electrical building, and generator.
- 2. Develop up to three alternatives for power supply:
 - a) Individual power drops at each well site.
 - b) Two power drops, one on each side of the Little Brazos.
 - c) One power drop with internal distribution to each site.
 - d) Meet on site with BTU and CITY to review power supply alternatives and routing.
 - e) Prepare one-line diagram for the selected alternative.

C. Determine CITY preferences and standards for electrical, instrumentation, controls, and communications.

D. Well Construction Parameters

- 1. Collect and review existing data on CITY's wells 5 and 6 (nearest wells).
- 2. Collect and review electric or geophysical logs for one or more oil or gas wells or test holes are located in the general vicinity of the planned well sites.

3. Provide pilot hole or test hole, test well and public supply well construction, permanent well pump and well motor equipment design parameters and estimates for each new well.
- E. Well Pollution Hazards Study and Report
 1. Perform and pollution hazard study for each planned well site that addresses the Texas Commission on Environmental Quality (TCEQ) rules and regulations for public supply wells in TCEQ Chapter 290 and the TCEQ Well Pollution Hazard Survey Checklist.
 2. Provide a written report for the pollution hazard study that is sealed by a Professional Geoscientist (PG) that is currently licensed in Texas.
- F. Collection Line Route Analysis
 1. Evaluate up to two routes for the off-site collection line. One route will generally follow the UPRR north to Sandy Point Road and connect to the existing system near Well 6. The second route will follow Bart Road to OSR and connect to the existing system near Well 5.
 - a) Prepare a map book for each route.
 - b) Prepare Opinion of Probable Construction Cost (OPCC) for each route.
 - c) Determine number of easements required for each route and provide list of affected property owners.
- G. Well Collection System Hydraulic Modeling
 1. Update the existing well field hydraulic model to incorporate the new wells and selected collection line route.
 2. Confirm size of proposed collection line.
 3. Model up to six different operational scenarios of the well collection system.
- H. Preliminary Design Report
 1. Prepare a Preliminary Design Report (PDR) summarizing the preliminary design tasks and design recommendations.
 - a) Prepare an updated OPCC for the full project.
 - b) Prepare an updated project schedule.
 - c) Include exhibits of recommended layouts.
 - d) Include final map book of selected collection line alignment.
 2. Submit a draft PDR for review by CITY.
 3. Hold an in-person review workshop to receive comments on the PDR.
 4. Revise and submit Final PDR.

III. Final Design

- A. Milestone Submittals
 1. FNI will prepare interim submittals for review by the CITY and CMAR at 50%, 90%, and Final levels of development. Submittals will include:
 - a) Construction drawings (PDF format).
 - b) Technical Specifications.
 - c) Contract Documents (90% and Final submittals only).
 - d) Updated project schedule.
 - e) Review of CMAR-Provided Cost Estimate
 2. Conduct one in-person review meeting with the CITY and CMAR for both the 50% and 90% submittals to receive comments on the design.
- B. Prepare drawings, specifications, Construction Contract Documents, designs, and layouts of improvements to be constructed for each milestone submittal, CMAR bid packages, and for the

final construction contract documents. If a configuration other than what is outlined in the Scope Narrative is chosen, then any additional engineering effort required to incorporate the alternative would be an Additional Service.

- C. Prepare plans, details, schedules, and specifications for electrical, instrumentation, and controls improvements at each site. Gear at each site will include one medium voltage VFD and one medium voltage switchgear housed in a prefabricated electrical building. Power distribution will include one 480V panelboard for HVAC and one 120V panelboard for miscellaneous loads. SCADA design will include an RTU at each site located inside of the electrical building and connected to the CITY's network via fiber optic cable.
- D. Prepare plans, profiles, details, and specifications for the wells, well discharge piping and valves, and collection piping on site.
- E. Prepare plans, details, and specifications for necessary site improvements, including access roads from both Sims Lane Cutoff and Bart Road, earthwork, and drainage design.
- F. Prepare plans, profiles, details, and specifications for the off-site collection line.
- G. Furnish CITY, when requested, the engineering data necessary for applications for routine permits required by local, state and federal authorities. Preparation of applications and supporting documents for government grants, TWDB or other funding, or for planning advances is an Additional Service.
- H. Submit drawings, specifications, design documentation and Construction Contract Documents to the applicable regulatory agencies for regulatory approval, where required. Because no occupied buildings are anticipated for this project, no coordination with Texas Department of Licensing and Regulation for required ADA compliance rule reviews and associated approvals is included in this scope of work.
- I. This project assumes the use of the CITY's standard construction documents including the General Conditions, specifications, details, and design guidelines. FNI will use its technical standards for drawings and technical specifications. FNI will coordinate with the CITY for any changes to match required specification standards in the Supplemental Conditions and Front-End Documents. FNI will review the CITY's CMAR contract and provide recommendations for modifications based on FNI's experience with other CMAR contracts.
- J. Furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.
- K. Prepare bidder's proposal forms (project quantities) of the improvements to be constructed.
- L. Furnish CITY one electronic PDF copy of final drawings, specifications, and bid proposals for each bid package.

IV. Bid Phase Services

Bid phase services assume the project is constructed based on an award through a CMAR using the Competitive Sealed Proposal process. Five bid packages are assumed for this project. Upon completion of the design services and approval of "Final" drawings and specifications by CITY, FNI will proceed with the performance of services in this phase as follows:

- A. Assist CITY and CMAR by responding to questions and interpreting proposal documents. Prepare and issue addenda to the proposal documents to plan holders, if necessary, following the CITY's standard bid process.

- B. Assist CITY and CMAR in securing Competitive Sealed Proposals. In coordination with the CITY, assist the CITY and CMAR in development of CSP selection criteria, assist in development of bidding documents for CSP using the CITY's standard construction contract documents format, assist the City with evaluating bids/proposals for compliance (no interviews are assumed as a part of this scope), and assist with the CSP award process.
- C. Attend one (1) pre-proposal conference for each bid package and coordinate responses with CITY. Response to the pre-proposal conference will be in the form of addenda issued after the conference. Attend the tour of the project site after the pre-bid conference.
- D. The CMAR will receive and open, and evaluate Competitive Sealed Proposals based on the published bid/proposer evaluation criteria at the appointed time. Assist the CITY with final negotiation with the selected Contractor.
- E. Assist CMAR in conforming Construction Contract Documents for execution. "As-Bid" plans and specifications shall incorporate any changes from addendum into the final electronic documents and the documents shall be reprinted with the appropriate changes notated and clouded per FNI record drawing standards.
- F. Provide CITY and CMAR with electronic (PDF) copies of conformed working contract documents. Hard copy sets of documents can be provided as an Additional Service.

Deliverables:

- 1. Addenda as necessary
- 2. Conformed Construction Contract Documents

V. Construction Phase General Representation:

Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. FNI will endeavor to protect CITY in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

- A. Assist CITY in conducting pre-construction conference(s) with the Contractor(s), review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.
- B. Establish communication procedures with the CITY and contractor. Submit monthly reports of construction progress. Reports will describe construction progress in general terms and summarize project costs, cash flow, construction schedule and pending and approved contract modifications.

- C. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process.
- D. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
- E. Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that FNI recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
- F. Make up to 36 monthly visits to the construction site (as distinguished from the continuous services of a Resident Project Representative) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the CITY against defects and deficiencies in the work of Contractors and will report any observed deficiencies to CITY. Visits to the site in excess of the specified number are an Additional Service.
- G. Make up to twelve (12) additional visits to the site, non-concurrent with the monthly site visits and meetings, to provide additional specialty observation or inspection as may be required for the project.
- H. Notify the CITY of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.
- I. Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project. The cost of such quality control shall be paid by CITY and is not included in the services to be performed by FNI.
- J. Interpret the drawings and specifications for CITY and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by CITY, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
- K. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf

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

- L. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the CITY on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the CITY if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.
- M. Conduct, in company with CITY's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two (2) trips are an Additional Service.
- N. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Furnish CITY one (1) full-size set of "Record Drawings" each for the on-site work and off-site collection line shall be provided by FNI to the CITY. All digital record drawings in PDF format and model files will be provided to the CITY via electronic submission.

Deliverables:

- 1. Record Drawings

ARTICLE II

SPECIAL SERVICES: Special Services to be performed by FNI, if authorized by CITY, which are not included in the above described Basic Services, are described as follows:

I. CMAR Coordination

- A. Assist the CITY with selection of a CMAR.
 - 1. Review procurement documents prepared by CITY and provide comments.

2. Review and score proposals submitted.
3. Participate in up to three shortlist interviews. Interviews will be held at CITY's offices.
4. Participate in a selection workshop with CITY to select a CMAR.

B.

II. Topographic Survey (Baseline | DCCM)

- A. BL will perform a detailed topographic survey of the three well pad sites and connecting access corridors, as well as the chosen offsite utility route(s) and alternate access route if needed. The well pad sites are approximately 400 feet square and the connecting strips are approximately 100 feet wide. If the utility route within OSR is selected, up to the full width of the right-of-way will be surveyed where requested. If the utility route along the railroad is selected, the topo strip surveyed will be approximately 100 feet in width.
- B. The topo survey will include: sufficient surface elevation points and breaklines to create an accurate digital terrain model (DTM) with contours. Manholes, headwalls, fences, roads, concrete slabs, buildings, culverts, utility poles, guys, valves, hydrants, meters, and similar features pertinent to the project. Rim and flowline elevations of sanitary sewers and storm inlets will be determined. Buried utility line marks by others (SUE) and pertinent trees (>24" trunk dia.) will also be located, if requested.
- C. Record deed lines, rights-of-way, known existing easement lines and ownership information will be researched and included in the topographic drawings at mapping accuracy (~6") for the topographic deliverables.
- D. BL will establish accurate 3d survey control points and benchmarks. Horizontal and vertical datums will be based on City of Bryan and/or Brazos County GPS control monuments and published datums (NAD83 & NAVD88).
- E. LiDAR scanning by UAV will be performed and its data will be processed where needed to supplement the ground survey work, especially in the offsite utility and access routes.

III. Easement Surveys (Baseline | DCCM)

- A. Prepare easement surveys as requested. Up to 30.

IV. Field Staking (Baseline | DCCM)

- A. BL will set stakes for well locations, soil test bores and SUE potholes as requested during the course of the Topo and Easement survey work. Construction staking after design is not included in this scope of work.

V. Subsurface Utility Engineering (SUE) (BBI | DCCM):

- A. Quality Level D (QL-D) is to research and draw all known public and private utilities onto a topographical or planimetric drawing.
 1. Utility identification within the Project Area
 - a) Research through the One-Call System, the Railroad Commission, the City and County to identify all the utility providers.
 2. Utility Contact List
 - a) Identification of the proper contact for each utility provider.
 - b) Creation of a list containing the name and contact information for each provider.
 3. Utility Record Acquisition
 - a) Requesting records and persisting in the request until they arrive.

- b) Review of gathered information to determine proper utility location or if additional records are required.
4. Development of the Composite Utility Map
 - a) Draw the record information on a separate layer of the topographical or planimetric drawing using a unique line style for each utility in the color pursuant to the utility identification color as prescribed by APWA. When possible, indicate the line size.
5. The use of information provided does not relieve any contractor from the duty to comply with applicable utility damage prevention laws and regulations, including , but not limited to, giving notification to utility owners or “One-Call Notifications Centers” before excavation.
- B. Quality Level B (QL-B) is to indicate by marking with paint, the presence and approximate horizontal location of subsurface utilities by use of geophysical prospecting techniques including, without limitations, electromagnetic, sonic, and acoustical techniques. BBI will provide the following designating services to aid the Client in the location of existing utilities:
 1. Provide all equipment, personnel and supplies required for performing designating services. BBI shall determine which equipment, personnel and supplies are required to perform designating services.
 2. Designate the approximate horizontal location of existing utilities within the project limits as described above, by use of Electromagnetic Equipment.
 3. Mark the utility locations on the ground pursuant to the utility identification color as prescribed by APWA, survey utility marks and map collected data.
 4. Markings on the ground are to be used for design and verification purposes and not for construction excavation purposes.
 5. The use of information provided does not relieve any contractor from the duty to comply with applicable utility damage prevention laws and regulations, including, but not limited to, giving notification to utility owners or “One-Call Notification Centers” before excavation.
 6. The accuracy of subsurface data can be influenced by factors beyond our control, such as conductivity of materials and their surroundings, soil moisture content, proximity of other underground utilities or structures, depth of utility, etc.
 7. Therefore, only the accuracy of data obtained by actual physical verification (through vacuum or hydro excavation or otherwise) can meet applicable engineering and/or surveying standards.
- C. Quality Level A (QL-A) Test Hole Services are the location and accurate horizontal and vertical position of subsurface utilities by excavating a test hole using vacuum excavation techniques and equipment that is non-destructive to utilities. In performing locating (test hole) services, BBI will:
 1. Provide all equipment, personnel and supplies required to perform locating services. BBI shall determine which equipment, personnel and supplies are required to perform such services.
 2. Conduct appropriate investigation of site conditions and utilize the Plan Sheets provided by the Client to establish conditions and understand the utility locations.
 3. Excavate test holes at Client selected locations to expose the utility to be measured in such a manner that doesn’t compromise the safety of the excavation and the integrity of the utility to be measured. In performing such excavations, BBI shall comply with applicable utility damage prevention laws.

4. Excavations will be performed using specially developed vacuum excavation equipment that is non-destructive to existing facilities. If contaminated soils are discovered during the excavation process, BBI will so notify the Client.
5. Investigate, evaluate, measure and record:
 - a) Actual depth to top of utility referenced to a survey marker installed directly above the centerline of the exposed utility structure and
 - b) Outside diameter of utility and configuration of non-encased, multi-conduit systems.
6. Furnish and install survey markers directly above the centerline of utility structure.
7. Backfill around the exposed facility using pea gravel in the roadways.
8. Evaluate and compare field information with utility information described in utility records and resolve conflicts.

VI. Geotechnical Investigation and Engineering (Terracon, FNI)

- A. Field Exploration
 1. Perform up to 60 borings with a total boring depth of 2,040 feet.
 2. Clear paths for drilling rig, up to three days.
- B. Provide traffic control for boring activities in road rights-of-way, up to four days.
- C. Perform standard laboratory testing of soil samples, including soil classification, compressive strength, triaxial testing, consolidation, and up to three corrosivity tests. Final testing schedule will be determined at completion of field work.
- D. Prepare two geotechnical engineering reports – for onsite work (FNI) and offsite utility lines (Terracon).

VII. Construction Materials Testing (Terracon)

- A. Field Services
 1. Earthwork observation and testing.
 2. Reinforcing steel observation and testing.
 3. Cast-in-place concrete observation and testing.
 4. An allowance of \$100,000 is assumed for this effort. Materials Testing beyond this allowance will be an Additional Service.

VIII. Test Hole and Test Well Construction Services (AGS)

- A. Participate in one (1) scheduled pre-construction meeting prior to the start of the test hole drilling operations with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the drilling site conditions, the drilling contractor's equipment, project specifications, requirements and schedule, and other relevant project information.
- B. Participate in up to three (3) virtual meetings with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the project status and progress, specifications and requirements, test hole and test well records, reports, data and logs, and other relevant project, test hole and test well information.
- C. Conduct up to two site visits during the test hole or test well phase and provide field observation or inspection services.
- D. Review and evaluate the driller's log, geophysical logs and the sieve analysis for the drill cuttings collected from the test hole.
- E. Provide written information and recommendations regarding the collection of one or more water samples from the test hole and the temporary test well sampling depth interval(s). If water samples are collected by the water well contractor from one or more test well water

sampling depths, then evaluate the field pumping data and laboratory analyses of the water samples for each sampling depth interval.

- F. Prepare a memorandum report for the test hole and test well that provides: a summary of the water well contractor's test hole drilling and logging and temporary test well construction, testing and sampling operations and water quality analyses with the related records and logs in one or more appendices; an assessment of the prospects for the drilling and completion of a new water supply well at or near the test hole site; and evaluation of whether there are any changes or revisions needed in the public supply well design or specifications.

IX. Public Supply Well Construction Services (AGS)

- A. Participate in one (1) scheduled pre-construction meeting prior to the start of the test hole drilling operations with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the drilling site conditions, the drilling contractor's equipment, project specifications, requirements and schedule, and other relevant project information.
- B. Participate in up to eight (8) virtual meetings with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the project status and progress, specifications and requirements, test hole and test well records, reports, data and logs, and other relevant project, test hole and test well information.
- C. Conduct up to two site visits during the test hole or test well phase and provide field observation or inspection services during a few critical water well drilling, construction, development and/or testing operations. The preliminary list of possible critical well drilling, construction and testing phases for field observation or inspection are: pilot hole geophysical logging; well casing installation or the casing pressure cementing operation; well screen(s) prior to or during field installation; well pumping test(s); and/or substantial or final well inspection with the City well pumping equipment installed and operational.
- D. Review and evaluate the driller's log, geophysical logs and the sieve analysis for the drill cuttings collected from the test hole for the production well.
- E. If a test hole is not drilled and completed previously as a separate project phase at the same site or a nearby site as planned City Wells 10, 11 and 12, then provide written information and recommendations regarding the collection of one or more water samples from the pilot hole and the temporary test well sampling depth interval(s). If water samples are collected by the water well contractor from one or more test well water sampling depths, then evaluate the field pumping data and laboratory analyses of the water samples for each sampling depth interval.
- F. Review the water well contractor's well construction or completion recommendations and provide a written evaluation regarding the proposed well construction design, material diameters and depth settings, the gravel pack gradation and the screen slot size. If requested or needed, participate in a conference call(s) or meeting(s) regarding the pilot hole data and logs, any water sample field data or laboratory analyses and the water well contractor's proposed well construction recommendations.
- G. Review the submittals for the well drilling and construction materials and operations. Review and evaluate the well development and pumping test field data, the proposed pumping rate, total dynamic head and depth setting for the permanent well pump and well motor horsepower and the well pumping equipment submittals. Also review the laboratory analyses for the water samples collected from the water well during the 36-hour pumping test and provide written review information to the CITY.

X. Water Well Laboratory Testing (AGS)

- A. If any laboratory analysis of a water or gas sample collected by AGS from a test hole, pilot hole or water well is requested or approved by the CITY, then AGS will be reimbursed for any water or gas samples collected that AGS is sent an invoice by the lab that performs the analysis.
- B. An allowance of \$6,600 is assumed for this effort.

XI. Environmental Services (FNI)

- A. FNI will complete a desktop evaluation of the proposed project utilizing readily available existing information. The types of information that will be gathered will include U.S. Geological Survey (USGS) 7.5-minute topographic maps, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) maps, Natural Resources Conservation Service (NRCS) soils maps, as well as recent and historical aerial photographs of the site. FNI understands that no real estate transactions or ROW acquisition is anticipated to warrant the need of a Phase I Environmental Site Assessment (ESA).
- B. FNI environmental scientists will conduct a pedestrian survey of the proposed well sites and along the proposed collection line alignment, to make observations of existing environmental conditions. Potential waters of the U.S., if present, will be identified and delineated. FNI environmental scientists will also analyze the vegetation cover types and habitat conditions along the alignment regarding the potential for threatened and endangered species to occur within the proposed project area. Note this effort would not include any presence/absence surveys for threatened and endangered species.
- C. Projects sponsored by public entities that affect a cumulative area greater than five acres or that disturb more than 5,000 cubic yards require advance consultation with the Texas Historical Commission (THC) according to Section 191.0525 (d) of the Antiquities Code of Texas. Based on a preliminary review of the proposed project area the project exceeds one or both of these thresholds, thus, coordination with THC is required. FNI will develop a desktop cultural resources evaluation to submit an informed letter describing the proposed project to the THC via their eTRAC online system. The THC will review the project description and respond within 30 days regarding whether a cultural resources survey is required or not. If a cultural resources survey is required, FNI would be able to assist with retaining a qualified subconsultant to perform these services through an amendment.
- D. Information gathered during the desktop evaluation and pedestrian survey will be used to prepare a draft technical memorandum. The memorandum will include discussions of methodologies used, the hydrologic characterization and locations of potential waters of the U.S., if present, and an opinion on their jurisdictional status. The memorandum will also describe any threatened and endangered species habitat and if potential effects to these species exist. During development of the memorandum, FNI will analyze the information gathered with the proposed project impacts to determine if the project could be constructed utilizing a U.S. Army Corps of Engineers (USACE) Nationwide Permit (NWP) without requiring the preparation and submittal of a Pre-Construction Notification (PCN) to the USACE. The draft technical memorandum will be submitted to the CITY for review and comment. After incorporating the CITY's comments into the document, FNI will submit a final technical memorandum to the CITY. If submittal of a PCN is required, then FNI will prepare and submit one to the USACE. If it is determined that preparation and submittal of an Individual Permit is required, FNI would be able to assist with these services through an amendment.

XII. Resident Project Representative

The Engineer will have a Resident Project Representative on the Site. In performing these services, 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 any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

A. The duties, responsibilities, and the limitations of authority of the Resident Project Representative, and designated assistants, are as follows:

1. Resident Project Representative is Engineer's agent at the site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding Resident Project Representative's actions. Resident Project Representative's dealings in matters pertaining to the on-site Work shall in general be with Engineer and Contractor, keeping CITY advised as necessary. Resident Project Representative's dealings with Subcontractors shall only be through or with full knowledge and approval of Contractor. Resident Project Representative shall generally communicate with CITY with the knowledge of and under the direction of Engineer.
2. These services are based on the use of FNI's standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If General Conditions other than FNI's standard are used, the CITY agrees to include provisions in the General Conditions that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the CITY is named as an indemnified party.

B. Duties and Responsibilities of Resident Project Representative:

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by Contractor and consult with Engineer concerning acceptability.
2. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist Engineer in serving as CITY's liaison with Contractor when Contractor's operations affect CITY's on-site operations.

- b. Assist in obtaining from CITY additional details or information, when required for proper execution of the Work.
4. Shop Drawings and Samples:
- a. Record date of receipt of Shop Drawings and Samples.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by Engineer.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
- a. Conduct on-site observations of the Work in progress to determine if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever Resident Project Representative believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of Work the Resident Project Representative believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the Contractor maintains adequate records thereof; and observe record and report to Engineer appropriate details relative to the test procedures and start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Engineer.
6. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
7. Request for Revisions: Consider and evaluate Contractor's suggestions for revisions to Drawings or Specifications and report with Resident Project Representative's recommendations to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. Records:
- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents, including all Work Change Directives, Addenda, Change Orders, Field Orders, Written

Amendments, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, submittals and correspondence received from and delivered to Contractor and other Project related documents.

9. Reports:

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

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

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

12. Completion:

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

C. Limitations of Authority of Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by Engineer.
2. Shall not exceed limitations of Engineer's authority as set forth in Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractor, Suppliers, or Contractor's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work or any activities or operations of CITY or Contractor.
6. Shall not accept shop drawing or sample submittals from anyone other than the Contractor.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by Engineer.

D. Schedule:

1. FNI assumed a per week average for the duration of the project. It is understood that certain weeks during the course of the project will require less effort (i.e. mobilization, weather impacts, demobilization) and some weeks will require more effort (i.e. early concrete pours, tie-ins, etc.). FNI will work to manage the peaks and valleys in effort onsite to cover "inspectable work" and conserve budget for the higher effort periods. FNI will communicate to the Owner monthly on effort expended, effort remaining, projected burn rates, and highlight any concerns.

E. Fee:

1. FNI proposes to perform the Inspection services as described in the fee summary attachment. This amount includes labor costs for one full time inspector at 50 hours per week for 30 months, one full time inspector at 50 hours per week for 185 months for pipe laying activities, 2 additional site visits per month and 1 day per week of virtual support from a CM/senior inspector for 30 months, as well as expenses such as mileage, per diem, and vehicle allowance. Inspector will come equipped with laptop, WIFI hotspot and a cell phone. Rate also includes minor equipment needed for the inspection of the project such as levels, tape measures, PPE, coatings thickness gauges and other similar items. Major equipment purchases requested by the CITY for the project will need to be negotiated. It does not include the provision of project site office space and related furnishings or office equipment.

ARTICLE III

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

EXHIBIT A
City of College Station
Wells 10, 11, and 12
Engineering Scope of Services
April 10, 2024

Scope Narrative:

The City of College Station (CITY) desires to construct three new water supply wells and approximately 10,000 linear feet of well collection line to convey flow to the existing well collection system near Well 6 or Well 5. This agreement establishes the relationship between the CITY and Freese and Nichols (FNI) to provide engineering services for preliminary design, final design, bid, construction and startup phases of the project.

The major project components that will be included in the design, in general, include the following elements:

- Three new water supply wells, each with a permitted peak capacity of 3,300 GPM.
- Pre-fabricated electrical building to house VFDs and other electrical and control equipment, one at each well site.
- Stand-by generator with automatic transfer switch at each well site.
- Associated electrical, controls and SCADA system improvements.
- Associated yard piping and hydraulic improvements.
- Associated drainage, landscaping and paving improvements.
- Approximately 10,000 linear feet of 36" well collection piping from each well site to the existing well collection system near Well 5 or Well 6; connection location and pipe routing will be determined during the Preliminary Design Phase.
- Associated pipeline facilities, such as air release valves, manholes and isolation valves.

It is assumed that the wells and collection line will be procured using the Construction Manager at Risk (CMAR) project delivery method. Though ultimately determined by the CITY and CMAR, five bid packages are assumed for this scope of work and are anticipated to be:

- Early earth work package to construct access roads and well pads.
- Well test hole drilling.
- Electrical and pumping equipment procurement.
- Well and site construction.
- Off-site collection line construction.

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services for the development of the Project:

I. Project Management

- A. Conduct a project kick-off meeting with CITY to review project scope of services, team, communication procedures, and schedule.
- B. Conduct an internal project kick-off meeting with FNI and Subconsultants to review project scope of services, roles and responsibilities, communications procedures, and schedule.

- C. Perform general administrative duties associated with the project including progress monitoring and monthly progress reporting, scheduling, general correspondence, documentation, office administration and invoicing for the scope items identified below. Documentation shall be in accordance with any regulatory requirements for the project. These duties include maintaining routine contact with the CITY to help meet the needs of the CITY in a timely manner and executing the work in accordance with the work plan, budget and schedule.
- D. Conduct bi-weekly project progress meetings with CITY, CMAR, and FNI through the design and bid phases. One meeting per month will be in-person at CITY's offices, with the remainder being held virtually.

II. **Preliminary Design**

A. Floodplain Evaluation

- 1. Identify and obtain available hydraulic modeling for the Little Brazos River. This may be a FEMA effective model or Base Level Engineering (BLE) model. Project site is within the 100-year floodplain but there is no floodway defined. It is assumed that a CLOMR or LOMR will not be necessary for the development of the project.
- 2. Review available hydraulic model to obtain 100-yr and 500-yr water surface elevations and coordinate with design team to inform fill elevations as well as elevations for critical infrastructure.
- 3. Modify available model to reflect pre-project and post-project conditions. Coordinate with design team on approaches to minimize impacts to flood elevations along Little Brazos River.
- 4. Prepare a technical memorandum documenting the findings from the hydraulic analysis.
- 5. Coordinate project with floodplain administrator with jurisdiction within project area to obtain no objection letter. It is assumed that a CLOMR or LOMR will not be needed.

B. Site Layout

- 1. Prepare site layouts for each well site and the overall project site. Include considerations for:
 - a) Access to each well site.
 - b) On-site routing for off-site utilities, including fiber optic communications, power, and well collection pipeline.
 - c) Typical well pad layout, including water supply well, monitoring well, utility power, electrical building, and generator.
- 2. Develop up to three alternatives for power supply:
 - a) Individual power drops at each well site.
 - b) Two power drops, one on each side of the Little Brazos.
 - c) One power drop with internal distribution to each site.
 - d) Meet on site with BTU and CITY to review power supply alternatives and routing.
 - e) Prepare one-line diagram for the selected alternative.

C. Determine CITY preferences and standards for electrical, instrumentation, controls, and communications.

D. Well Construction Parameters

- 1. Collect and review existing data on CITY's wells 5 and 6 (nearest wells).
- 2. Collect and review electric or geophysical logs for one or more oil or gas wells or test holes are located in the general vicinity of the planned well sites.

3. Provide pilot hole or test hole, test well and public supply well construction, permanent well pump and well motor equipment design parameters and estimates for each new well.
- E. Well Pollution Hazards Study and Report
 1. Perform and pollution hazard study for each planned well site that addresses the Texas Commission on Environmental Quality (TCEQ) rules and regulations for public supply wells in TCEQ Chapter 290 and the TCEQ Well Pollution Hazard Survey Checklist.
 2. Provide a written report for the pollution hazard study that is sealed by a Professional Geoscientist (PG) that is currently licensed in Texas.
- F. Collection Line Route Analysis
 1. Evaluate up to two routes for the off-site collection line. One route will generally follow the UPRR north to Sandy Point Road and connect to the existing system near Well 6. The second route will follow Bart Road to OSR and connect to the existing system near Well 5.
 - a) Prepare a map book for each route.
 - b) Prepare Opinion of Probable Construction Cost (OPCC) for each route.
 - c) Determine number of easements required for each route and provide list of affected property owners.
- G. Well Collection System Hydraulic Modeling
 1. Update the existing well field hydraulic model to incorporate the new wells and selected collection line route.
 2. Confirm size of proposed collection line.
 3. Model up to six different operational scenarios of the well collection system.
- H. Preliminary Design Report
 1. Prepare a Preliminary Design Report (PDR) summarizing the preliminary design tasks and design recommendations.
 - a) Prepare an updated OPCC for the full project.
 - b) Prepare an updated project schedule.
 - c) Include exhibits of recommended layouts.
 - d) Include final map book of selected collection line alignment.
 2. Submit a draft PDR for review by CITY.
 3. Hold an in-person review workshop to receive comments on the PDR.
 4. Revise and submit Final PDR.

III. Final Design

- A. Milestone Submittals
 1. FNI will prepare interim submittals for review by the CITY and CMAR at 50%, 90%, and Final levels of development. Submittals will include:
 - a) Construction drawings (PDF format).
 - b) Technical Specifications.
 - c) Contract Documents (90% and Final submittals only).
 - d) Updated project schedule.
 - e) Review of CMAR-Provided Cost Estimate
 2. Conduct one in-person review meeting with the CITY and CMAR for both the 50% and 90% submittals to receive comments on the design.
- B. Prepare drawings, specifications, Construction Contract Documents, designs, and layouts of improvements to be constructed for each milestone submittal, CMAR bid packages, and for the

final construction contract documents. If a configuration other than what is outlined in the Scope Narrative is chosen, then any additional engineering effort required to incorporate the alternative would be an Additional Service.

- C. Prepare plans, details, schedules, and specifications for electrical, instrumentation, and controls improvements at each site. Gear at each site will include one medium voltage VFD and one medium voltage switchgear housed in a prefabricated electrical building. Power distribution will include one 480V panelboard for HVAC and one 120V panelboard for miscellaneous loads. SCADA design will include an RTU at each site located inside of the electrical building and connected to the CITY's network via fiber optic cable.
- D. Prepare plans, profiles, details, and specifications for the wells, well discharge piping and valves, and collection piping on site.
- E. Prepare plans, details, and specifications for necessary site improvements, including access roads from both Sims Lane Cutoff and Bart Road, earthwork, and drainage design.
- F. Prepare plans, profiles, details, and specifications for the off-site collection line.
- G. Furnish CITY, when requested, the engineering data necessary for applications for routine permits required by local, state and federal authorities. Preparation of applications and supporting documents for government grants, TWDB or other funding, or for planning advances is an Additional Service.
- H. Submit drawings, specifications, design documentation and Construction Contract Documents to the applicable regulatory agencies for regulatory approval, where required. Because no occupied buildings are anticipated for this project, no coordination with Texas Department of Licensing and Regulation for required ADA compliance rule reviews and associated approvals is included in this scope of work.
- I. This project assumes the use of the CITY's standard construction documents including the General Conditions, specifications, details, and design guidelines. FNI will use its technical standards for drawings and technical specifications. FNI will coordinate with the CITY for any changes to match required specification standards in the Supplemental Conditions and Front-End Documents. FNI will review the CITY's CMAR contract and provide recommendations for modifications based on FNI's experience with other CMAR contracts.
- J. Furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.
- K. Prepare bidder's proposal forms (project quantities) of the improvements to be constructed.
- L. Furnish CITY one electronic PDF copy of final drawings, specifications, and bid proposals for each bid package.

IV. Bid Phase Services

Bid phase services assume the project is constructed based on an award through a CMAR using the Competitive Sealed Proposal process. Five bid packages are assumed for this project. Upon completion of the design services and approval of "Final" drawings and specifications by CITY, FNI will proceed with the performance of services in this phase as follows:

- A. Assist CITY and CMAR by responding to questions and interpreting proposal documents. Prepare and issue addenda to the proposal documents to plan holders, if necessary, following the CITY's standard bid process.

- B. Assist CITY and CMAR in securing Competitive Sealed Proposals. In coordination with the CITY, assist the CITY and CMAR in development of CSP selection criteria, assist in development of bidding documents for CSP using the CITY's standard construction contract documents format, assist the City with evaluating bids/proposals for compliance (no interviews are assumed as a part of this scope), and assist with the CSP award process.
- C. Attend one (1) pre-proposal conference for each bid package and coordinate responses with CITY. Response to the pre-proposal conference will be in the form of addenda issued after the conference. Attend the tour of the project site after the pre-bid conference.
- D. The CMAR will receive and open, and evaluate Competitive Sealed Proposals based on the published bid/proposer evaluation criteria at the appointed time. Assist the CITY with final negotiation with the selected Contractor.
- E. Assist CMAR in conforming Construction Contract Documents for execution. "As-Bid" plans and specifications shall incorporate any changes from addendum into the final electronic documents and the documents shall be reprinted with the appropriate changes notated and clouded per FNI record drawing standards.
- F. Provide CITY and CMAR with electronic (PDF) copies of conformed working contract documents. Hard copy sets of documents can be provided as an Additional Service.

Deliverables:

- 1. Addenda as necessary
- 2. Conformed Construction Contract Documents

V. Construction Phase General Representation:

Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. FNI will endeavor to protect CITY in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

- A. Assist CITY in conducting pre-construction conference(s) with the Contractor(s), review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.
- B. Establish communication procedures with the CITY and contractor. Submit monthly reports of construction progress. Reports will describe construction progress in general terms and summarize project costs, cash flow, construction schedule and pending and approved contract modifications.

- C. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process.
- D. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
- E. Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that FNI recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
- F. Make up to 36 monthly visits to the construction site (as distinguished from the continuous services of a Resident Project Representative) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the CITY against defects and deficiencies in the work of Contractors and will report any observed deficiencies to CITY. Visits to the site in excess of the specified number are an Additional Service.
- G. Make up to twelve (12) additional visits to the site, non-concurrent with the monthly site visits and meetings, to provide additional specialty observation or inspection as may be required for the project.
- H. Notify the CITY of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.
- I. Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project. The cost of such quality control shall be paid by CITY and is not included in the services to be performed by FNI.
- J. Interpret the drawings and specifications for CITY and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by CITY, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
- K. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf

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

- L. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the CITY on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the CITY if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.
- M. Conduct, in company with CITY's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two (2) trips are an Additional Service.
- N. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Furnish CITY one (1) full-size set of "Record Drawings" each for the on-site work and off-site collection line shall be provided by FNI to the CITY. All digital record drawings in PDF format and model files will be provided to the CITY via electronic submission.

Deliverables:

- 1. Record Drawings

ARTICLE II

SPECIAL SERVICES: Special Services to be performed by FNI, if authorized by CITY, which are not included in the above described Basic Services, are described as follows:

I. CMAR Coordination

- A. Assist the CITY with selection of a CMAR.
 - 1. Review procurement documents prepared by CITY and provide comments.

2. Review and score proposals submitted.
3. Participate in up to three shortlist interviews. Interviews will be held at CITY's offices.
4. Participate in a selection workshop with CITY to select a CMAR.

B.

II. Topographic Survey (Baseline | DCCM)

- A. BL will perform a detailed topographic survey of the three well pad sites and connecting access corridors, as well as the chosen offsite utility route(s) and alternate access route if needed. The well pad sites are approximately 400 feet square and the connecting strips are approximately 100 feet wide. If the utility route within OSR is selected, up to the full width of the right-of-way will be surveyed where requested. If the utility route along the railroad is selected, the topo strip surveyed will be approximately 100 feet in width.
- B. The topo survey will include: sufficient surface elevation points and breaklines to create an accurate digital terrain model (DTM) with contours. Manholes, headwalls, fences, roads, concrete slabs, buildings, culverts, utility poles, guys, valves, hydrants, meters, and similar features pertinent to the project. Rim and flowline elevations of sanitary sewers and storm inlets will be determined. Buried utility line marks by others (SUE) and pertinent trees (>24" trunk dia.) will also be located, if requested.
- C. Record deed lines, rights-of-way, known existing easement lines and ownership information will be researched and included in the topographic drawings at mapping accuracy (~6") for the topographic deliverables.
- D. BL will establish accurate 3d survey control points and benchmarks. Horizontal and vertical datums will be based on City of Bryan and/or Brazos County GPS control monuments and published datums (NAD83 & NAVD88).
- E. LiDAR scanning by UAV will be performed and its data will be processed where needed to supplement the ground survey work, especially in the offsite utility and access routes.

III. Easement Surveys (Baseline | DCCM)

- A. Prepare easement surveys as requested. Up to 30.

IV. Field Staking (Baseline | DCCM)

- A. BL will set stakes for well locations, soil test bores and SUE potholes as requested during the course of the Topo and Easement survey work. Construction staking after design is not included in this scope of work.

V. Subsurface Utility Engineering (SUE) (BBI | DCCM):

- A. Quality Level D (QL-D) is to research and draw all known public and private utilities onto a topographical or planimetric drawing.
 1. Utility identification within the Project Area
 - a) Research through the One-Call System, the Railroad Commission, the City and County to identify all the utility providers.
 2. Utility Contact List
 - a) Identification of the proper contact for each utility provider.
 - b) Creation of a list containing the name and contact information for each provider.
 3. Utility Record Acquisition
 - a) Requesting records and persisting in the request until they arrive.

- b) Review of gathered information to determine proper utility location or if additional records are required.
4. Development of the Composite Utility Map
 - a) Draw the record information on a separate layer of the topographical or planimetric drawing using a unique line style for each utility in the color pursuant to the utility identification color as prescribed by APWA. When possible, indicate the line size.
5. The use of information provided does not relieve any contractor from the duty to comply with applicable utility damage prevention laws and regulations, including , but not limited to, giving notification to utility owners or “One-Call Notifications Centers” before excavation.
- B. Quality Level B (QL-B) is to indicate by marking with paint, the presence and approximate horizontal location of subsurface utilities by use of geophysical prospecting techniques including, without limitations, electromagnetic, sonic, and acoustical techniques. BBI will provide the following designating services to aid the Client in the location of existing utilities:
 1. Provide all equipment, personnel and supplies required for performing designating services. BBI shall determine which equipment, personnel and supplies are required to perform designating services.
 2. Designate the approximate horizontal location of existing utilities within the project limits as described above, by use of Electromagnetic Equipment.
 3. Mark the utility locations on the ground pursuant to the utility identification color as prescribed by APWA, survey utility marks and map collected data.
 4. Markings on the ground are to be used for design and verification purposes and not for construction excavation purposes.
 5. The use of information provided does not relieve any contractor from the duty to comply with applicable utility damage prevention laws and regulations, including, but not limited to, giving notification to utility owners or “One-Call Notification Centers” before excavation.
 6. The accuracy of subsurface data can be influenced by factors beyond our control, such as conductivity of materials and their surroundings, soil moisture content, proximity of other underground utilities or structures, depth of utility, etc.
 7. Therefore, only the accuracy of data obtained by actual physical verification (through vacuum or hydro excavation or otherwise) can meet applicable engineering and/or surveying standards.
- C. Quality Level A (QL-A) Test Hole Services are the location and accurate horizontal and vertical position of subsurface utilities by excavating a test hole using vacuum excavation techniques and equipment that is non-destructive to utilities. In performing locating (test hole) services, BBI will:
 1. Provide all equipment, personnel and supplies required to perform locating services. BBI shall determine which equipment, personnel and supplies are required to perform such services.
 2. Conduct appropriate investigation of site conditions and utilize the Plan Sheets provided by the Client to establish conditions and understand the utility locations.
 3. Excavate test holes at Client selected locations to expose the utility to be measured in such a manner that doesn’t compromise the safety of the excavation and the integrity of the utility to be measured. In performing such excavations, BBI shall comply with applicable utility damage prevention laws.

4. Excavations will be performed using specially developed vacuum excavation equipment that is non-destructive to existing facilities. If contaminated soils are discovered during the excavation process, BBI will so notify the Client.
5. Investigate, evaluate, measure and record:
 - a) Actual depth to top of utility referenced to a survey marker installed directly above the centerline of the exposed utility structure and
 - b) Outside diameter of utility and configuration of non-encased, multi-conduit systems.
6. Furnish and install survey markers directly above the centerline of utility structure.
7. Backfill around the exposed facility using pea gravel in the roadways.
8. Evaluate and compare field information with utility information described in utility records and resolve conflicts.

VI. Geotechnical Investigation and Engineering (Terracon, FNI)

- A. Field Exploration
 1. Perform up to 60 borings with a total boring depth of 2,040 feet.
 2. Clear paths for drilling rig, up to three days.
- B. Provide traffic control for boring activities in road rights-of-way, up to four days.
- C. Perform standard laboratory testing of soil samples, including soil classification, compressive strength, triaxial testing, consolidation, and up to three corrosivity tests. Final testing schedule will be determined at completion of field work.
- D. Prepare two geotechnical engineering reports – for onsite work (FNI) and offsite utility lines (Terracon).

VII. Construction Materials Testing (Terracon)

- A. Field Services
 1. Earthwork observation and testing.
 2. Reinforcing steel observation and testing.
 3. Cast-in-place concrete observation and testing.
 4. An allowance of \$100,000 is assumed for this effort. Materials Testing beyond this allowance will be an Additional Service.

VIII. Test Hole and Test Well Construction Services (AGS)

- A. Participate in one (1) scheduled pre-construction meeting prior to the start of the test hole drilling operations with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the drilling site conditions, the drilling contractor's equipment, project specifications, requirements and schedule, and other relevant project information.
- B. Participate in up to three (3) virtual meetings with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the project status and progress, specifications and requirements, test hole and test well records, reports, data and logs, and other relevant project, test hole and test well information.
- C. Conduct up to two site visits during the test hole or test well phase and provide field observation or inspection services.
- D. Review and evaluate the driller's log, geophysical logs and the sieve analysis for the drill cuttings collected from the test hole.
- E. Provide written information and recommendations regarding the collection of one or more water samples from the test hole and the temporary test well sampling depth interval(s). If water samples are collected by the water well contractor from one or more test well water

sampling depths, then evaluate the field pumping data and laboratory analyses of the water samples for each sampling depth interval.

- F. Prepare a memorandum report for the test hole and test well that provides: a summary of the water well contractor's test hole drilling and logging and temporary test well construction, testing and sampling operations and water quality analyses with the related records and logs in one or more appendices; an assessment of the prospects for the drilling and completion of a new water supply well at or near the test hole site; and evaluation of whether there are any changes or revisions needed in the public supply well design or specifications.

IX. Public Supply Well Construction Services (AGS)

- A. Participate in one (1) scheduled pre-construction meeting prior to the start of the test hole drilling operations with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the drilling site conditions, the drilling contractor's equipment, project specifications, requirements and schedule, and other relevant project information.
- B. Participate in up to eight (8) virtual meetings with the CITY, FNI, AGS, CMAR, and Drilling Contractor to discuss the project status and progress, specifications and requirements, test hole and test well records, reports, data and logs, and other relevant project, test hole and test well information.
- C. Conduct up to two site visits during the test hole or test well phase and provide field observation or inspection services during a few critical water well drilling, construction, development and/or testing operations. The preliminary list of possible critical well drilling, construction and testing phases for field observation or inspection are: pilot hole geophysical logging; well casing installation or the casing pressure cementing operation; well screen(s) prior to or during field installation; well pumping test(s); and/or substantial or final well inspection with the City well pumping equipment installed and operational.
- D. Review and evaluate the driller's log, geophysical logs and the sieve analysis for the drill cuttings collected from the test hole for the production well.
- E. If a test hole is not drilled and completed previously as a separate project phase at the same site or a nearby site as planned City Wells 10, 11 and 12, then provide written information and recommendations regarding the collection of one or more water samples from the pilot hole and the temporary test well sampling depth interval(s). If water samples are collected by the water well contractor from one or more test well water sampling depths, then evaluate the field pumping data and laboratory analyses of the water samples for each sampling depth interval.
- F. Review the water well contractor's well construction or completion recommendations and provide a written evaluation regarding the proposed well construction design, material diameters and depth settings, the gravel pack gradation and the screen slot size. If requested or needed, participate in a conference call(s) or meeting(s) regarding the pilot hole data and logs, any water sample field data or laboratory analyses and the water well contractor's proposed well construction recommendations.
- G. Review the submittals for the well drilling and construction materials and operations. Review and evaluate the well development and pumping test field data, the proposed pumping rate, total dynamic head and depth setting for the permanent well pump and well motor horsepower and the well pumping equipment submittals. Also review the laboratory analyses for the water samples collected from the water well during the 36-hour pumping test and provide written review information to the CITY.

X. Water Well Laboratory Testing (AGS)

- A. If any laboratory analysis of a water or gas sample collected by AGS from a test hole, pilot hole or water well is requested or approved by the CITY, then AGS will be reimbursed for any water or gas samples collected that AGS is sent an invoice by the lab that performs the analysis.
- B. An allowance of \$6,600 is assumed for this effort.

XI. Environmental Services (FNI)

- A. FNI will complete a desktop evaluation of the proposed project utilizing readily available existing information. The types of information that will be gathered will include U.S. Geological Survey (USGS) 7.5-minute topographic maps, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) maps, Natural Resources Conservation Service (NRCS) soils maps, as well as recent and historical aerial photographs of the site. FNI understands that no real estate transactions or ROW acquisition is anticipated to warrant the need of a Phase I Environmental Site Assessment (ESA).
- B. FNI environmental scientists will conduct a pedestrian survey of the proposed well sites and along the proposed collection line alignment, to make observations of existing environmental conditions. Potential waters of the U.S., if present, will be identified and delineated. FNI environmental scientists will also analyze the vegetation cover types and habitat conditions along the alignment regarding the potential for threatened and endangered species to occur within the proposed project area. Note this effort would not include any presence/absence surveys for threatened and endangered species.
- C. Projects sponsored by public entities that affect a cumulative area greater than five acres or that disturb more than 5,000 cubic yards require advance consultation with the Texas Historical Commission (THC) according to Section 191.0525 (d) of the Antiquities Code of Texas. Based on a preliminary review of the proposed project area the project exceeds one or both of these thresholds, thus, coordination with THC is required. FNI will develop a desktop cultural resources evaluation to submit an informed letter describing the proposed project to the THC via their eTRAC online system. The THC will review the project description and respond within 30 days regarding whether a cultural resources survey is required or not. If a cultural resources survey is required, FNI would be able to assist with retaining a qualified subconsultant to perform these services through an amendment.
- D. Information gathered during the desktop evaluation and pedestrian survey will be used to prepare a draft technical memorandum. The memorandum will include discussions of methodologies used, the hydrologic characterization and locations of potential waters of the U.S., if present, and an opinion on their jurisdictional status. The memorandum will also describe any threatened and endangered species habitat and if potential effects to these species exist. During development of the memorandum, FNI will analyze the information gathered with the proposed project impacts to determine if the project could be constructed utilizing a U.S. Army Corps of Engineers (USACE) Nationwide Permit (NWP) without requiring the preparation and submittal of a Pre-Construction Notification (PCN) to the USACE. The draft technical memorandum will be submitted to the CITY for review and comment. After incorporating the CITY's comments into the document, FNI will submit a final technical memorandum to the CITY. If submittal of a PCN is required, then FNI will prepare and submit one to the USACE. If it is determined that preparation and submittal of an Individual Permit is required, FNI would be able to assist with these services through an amendment.

XII. Resident Project Representative

The Engineer will have a Resident Project Representative on the Site. In performing these services, 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 any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

A. The duties, responsibilities, and the limitations of authority of the Resident Project Representative, and designated assistants, are as follows:

1. Resident Project Representative is Engineer's agent at the site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding Resident Project Representative's actions. Resident Project Representative's dealings in matters pertaining to the on-site Work shall in general be with Engineer and Contractor, keeping CITY advised as necessary. Resident Project Representative's dealings with Subcontractors shall only be through or with full knowledge and approval of Contractor. Resident Project Representative shall generally communicate with CITY with the knowledge of and under the direction of Engineer.
2. These services are based on the use of FNI's standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If General Conditions other than FNI's standard are used, the CITY agrees to include provisions in the General Conditions that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the CITY is named as an indemnified party.

B. Duties and Responsibilities of Resident Project Representative:

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by Contractor and consult with Engineer concerning acceptability.
2. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist Engineer in serving as CITY's liaison with Contractor when Contractor's operations affect CITY's on-site operations.

- b. Assist in obtaining from CITY additional details or information, when required for proper execution of the Work.
4. Shop Drawings and Samples:
 - a. Record date of receipt of Shop Drawings and Samples.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by Engineer.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
 - a. Conduct on-site observations of the Work in progress to determine if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever Resident Project Representative believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of Work the Resident Project Representative believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the Contractor maintains adequate records thereof; and observe record and report to Engineer appropriate details relative to the test procedures and start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Engineer.
6. Interpretation of Contract Documents: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
7. Request for Revisions: Consider and evaluate Contractor's suggestions for revisions to Drawings or Specifications and report with Resident Project Representative's recommendations to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. Records:
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents, including all Work Change Directives, Addenda, Change Orders, Field Orders, Written

Amendments, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, submittals and correspondence received from and delivered to Contractor and other Project related documents.

9. Reports:

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

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

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

12. Completion:

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

C. Limitations of Authority of Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by Engineer.
2. Shall not exceed limitations of Engineer's authority as set forth in Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractor, Suppliers, or Contractor's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work or any activities or operations of CITY or Contractor.
6. Shall not accept shop drawing or sample submittals from anyone other than the Contractor.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by Engineer.

D. Schedule:

1. FNI assumed a per week average for the duration of the project. It is understood that certain weeks during the course of the project will require less effort (i.e. mobilization, weather impacts, demobilization) and some weeks will require more effort (i.e. early concrete pours, tie-ins, etc.). FNI will work to manage the peaks and valleys in effort onsite to cover "inspectable work" and conserve budget for the higher effort periods. FNI will communicate to the Owner monthly on effort expended, effort remaining, projected burn rates, and highlight any concerns.

E. Fee:

1. FNI proposes to perform the Inspection services as described in the fee summary attachment. This amount includes labor costs for one full time inspector at 50 hours per week for 30 months, one full time inspector at 50 hours per week for 185 months for pipe laying activities, 2 additional site visits per month and 1 day per week of virtual support from a CM/senior inspector for 30 months, as well as expenses such as mileage, per diem, and vehicle allowance. Inspector will come equipped with laptop, WIFI hotspot and a cell phone. Rate also includes minor equipment needed for the inspection of the project such as levels, tape measures, PPE, coatings thickness gauges and other similar items. Major equipment purchases requested by the CITY for the project will need to be negotiated. It does not include the provision of project site office space and related furnishings or office equipment.

ARTICLE III

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

*City of College Station
Wells 10, 11, and 12
Scope of Work*

- A. Any items of work noted as not included throughout the scope.
- B. Procurement by other means such as CMAR.
- C. Providing changes within the flood plain requiring review and submittal of Conditional Letter of Map Revision (CLOMR) or Letter of Map Revision (LOMR).
- D. Clearing of trees to access geotechnical boring locations in excess of three days of clearing.
- E. Preparation of construction traffic control plan(s).
- F. Field layouts or the furnishing of construction line and grade surveys.
- G. GIS mapping services or assistance with these services.
- H. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by CITY.
- I. Providing renderings, model, and mock-ups requested by the CITY.
- J. Revising drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by CITY or 2) due to other causes not solely within the control of FNI.
- K. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required regarding the replacement of such Work.
- L. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by CITY.
- M. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- N. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- O. Conducting pilot plant studies or tests.
- P. Furnishing Special Inspections required under chapter 17 of the International Building Code. These Special Inspections are often continuous, requiring an inspector dedicated to inspection of the individual work item, and they are in addition to General Representation and Resident Representation services noted elsewhere in the contract. These continuous inspection services can be provided by FNI as an Additional Service.
- Q. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- R. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance (beyond the services shown in Special Services), and other assistance required to address environmental issues.
- S. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- T. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- U. Visits to the site more than the number of trips included in Basic Services for periodic site visits, coordination meetings, or contract completion activities.
- V. Any services required because of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- W. Providing services after the completion of the construction phase not specifically listed in Basic or Special Services.

*City of College Station
Wells 10, 11, and 12
Scope of Work*

- A. Any items of work noted as not included throughout the scope.
- B. Procurement by other means such as CMAR.
- C. Providing changes within the flood plain requiring review and submittal of Conditional Letter of Map Revision (CLOMR) or Letter of Map Revision (LOMR).
- D. Clearing of trees to access geotechnical boring locations in excess of three days of clearing.
- E. Preparation of construction traffic control plan(s).
- F. Field layouts or the furnishing of construction line and grade surveys.
- G. GIS mapping services or assistance with these services.
- H. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by CITY.
- I. Providing renderings, model, and mock-ups requested by the CITY.
- J. Revising drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by CITY or 2) due to other causes not solely within the control of FNI.
- K. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required regarding the replacement of such Work.
- L. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by CITY.
- M. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- N. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- O. Conducting pilot plant studies or tests.
- P. Furnishing Special Inspections required under chapter 17 of the International Building Code. These Special Inspections are often continuous, requiring an inspector dedicated to inspection of the individual work item, and they are in addition to General Representation and Resident Representation services noted elsewhere in the contract. These continuous inspection services can be provided by FNI as an Additional Service.
- Q. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- R. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance (beyond the services shown in Special Services), and other assistance required to address environmental issues.
- S. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- T. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- U. Visits to the site more than the number of trips included in Basic Services for periodic site visits, coordination meetings, or contract completion activities.
- V. Any services required because of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- W. Providing services after the completion of the construction phase not specifically listed in Basic or Special Services.

- X. 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 CITY.
- Y. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- Z. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.
- AA. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- BB. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- CC. Provide follow-up professional services during Contractor’s warranty period.
- DD. Providing data, reports or briefings to City Council on the status of the project.
- EE. Design for additional stormwater retention or treatment facilities beyond those identified in Basic Services.
- FF. Preparation of an Individual Section 404 permit application;
- GG. Preparation of a Nationwide Permit (NWP) Pre-Construction Notification (PCN) for submittal to the USACE;
- HH. Preparation of a mitigation plan or coordinating the purchase of mitigation bank credits for impacts to waters of the U.S. or other natural resources;
- II. Conducting function or condition assessments (e.g., TXRAM) of waters of the U.S. potentially impacted by the proposed project;
- JJ. Presence/absence surveys for federally listed threatened/endangered species;
- KK. Formal consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act;
- LL. Conducting cultural resources studies or surveys;
- MM. Phase I/II Environmental Site Assessment;
- NN. Conducting an archeological survey along the proposed pipeline alignment;
- OO. Preparation of a Preliminary Jurisdictional Determination report.
- PP. Identification of tree species and/or preparation of a tree mitigation or preservation plan required due to tree ordinance compliance; and
- QQ. Other environmental services not specifically defined in this scope of services.

ARTICLE IV

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the following schedule:

<u>Preliminary Design Completion</u>	<u>5 months from NTP</u>
<u>Final Design Completion</u>	<u>8 months from Preliminary Design Completion</u>
<u>Proposal Phase</u>	<u>3 Months from Final Design Completion</u>
<u>Construction Phase</u>	<u>36 Months from Contractor NTP</u>
<u>Post Construction Phase</u>	<u>2 Months from Completion of Warranty Period</u>

If FNI’s services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in

CITY or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

ARTICLE V

FNI has considered the following in development of FNI's scope and fee proposal for this project:

- A. CITY recognizes and expects that certain Change Orders may be required. FNI recommends that the CITY budget a minimum of 5% of the estimated project cost for construction change orders. Any responsibility of FNI for the costs of Covered Changed Orders, unless the Change Order is needed from FNI's responsibilities, will be determined based on applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include:
- Any costs that CITY would have incurred if the Covered Change Order work had been included originally in the Contract Documents and without any other error or omission of FNI related thereto,
 - Any costs that are due to unforeseen site conditions,
 - Any costs that are due to changes made by the CITY, or
 - Any costs that are due to the Contractor.
- Wherever used in this document, the term FNI includes FNI's officers, directors, partners, employees, agents, and FNIs Consultants.
- B. CITY will designate in writing a person to act as CITY's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define CITY's policies and decisions with respect to FNI's services for the Project.
- C. CITY will provide all criteria and full information as to CITY'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 CITY will require to be included in the drawings and specifications.
- D. 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.
- E. CITY will 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.
- F. CITY will attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.
- G. CITY will give prompt written notice to FNI whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and CITY designate the following representatives:

CITY's Designated Representative –

Casey Rhodes
300 Krenek Tap Road
College Station, TX 77845
979-764-6248
crhodes@cstx.gov

CITY's Accounting Representative –

Lisa Davis
1101 South Texas Avenue
College Station, TX 77840
979-764-3558
ldavis@cstx.gov

FNI's Designated Representative –

Richard Weatherly
11200 Broadway Street
Offices West Ste. 2320
Pearland, TX 77584
713-600-6824
raw@freese.com

FNI's Accounting Representative –

Kristina Isaac
10497 Town and Country Way, Ste. 600
Houston, TX 77024
713-600-6860
kristina.isaac@freese.com

Exhibit “B”
Payment Terms

SELECT ONE:

Payment is a fixed fee in the amount listed in paragraph 2.01 of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

Schedule of Payment for each phase:

Eight Million Four Hundred Sixteen Thousand Six Hundred Three (\$8,416,603.00)

ARTICLE VII – COMPENSATION (ATTACHMENT CO)

City of College Station Wells 10, 11, and 12 Summary of Fee by Task	
Task 1 – Project Management	\$366,000
Task 2 – Preliminary Design	\$675,000
Task 3 – Final Design	\$1,510,000
Task 4 – Bid Phase	\$175,000
Task 5 – Construction Phase General Representation	\$2,395,000
Basic Services Total (Lump Sum)	\$5,121,000
Task 1 – CMAR Selection	\$61,729
Task 2 – Topographic Survey	\$56,069
Task 3 – Easement Survey	\$165,000
Task 4 – Field Staking	\$16,500
Task 5 – Subsurface Utility Engineering (SUE)	\$52,868
Task 6 – Geotechnical Engineering	\$323,583
Task 7 – Construction Materials Testing	\$95,502
Task 8 – Test Hole and Test Well Construction Services	\$82,500
Task 9 – Public Supply Well Construction Services	\$99,000
Task 10 – Water Well Laboratory Testing	\$6,600
Task 11 – Environmental Services	\$47,249
Task 12 – Resident Project Representative (RPR)	
Well Site RPR (1 RPR, 30 months, 50 hours per week)	\$1,565,958
Collection Line RPR (1 RPR, 15 months, 50 hours per week)	\$723,724
Special Services Total (Cost Plus Max)	\$3,295,603
Project Total	\$8,416,603

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 Exhibit A, FNI will notify CITY for CITY's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges below.

City of College Station
Wells 10, 11, and 12
Scope of Work

Schedule of Charges:

<u>Position</u>	<u>Hourly Rate</u>	
	<u>Min</u>	<u>Max</u>
Professional 1	91	182
Professional 2	123	200
Professional 3	140	305
Professional 4	161	333
Professional 5	238	361
Professional 6	242	448
Construction Manager 1	119	168
Construction Manager 2	123	207
Construction Manager 3	154	207
Construction Manager 4	179	270
Construction Manager 5	214	315
Construction Manager 6	284	375
Construction Representative 1	81	95
Construction Representative 2	95	123
Construction Representative 3	130	196
Construction Representative 4	130	196
CAD Technician/Designer 1	88	126
CAD Technician/Designer 2	105	207
CAD Technician/Designer 3	137	263
Corporate Project Support 1	74	165
Corporate Project Support 2	84	242
Corporate Project Support 3	105	350
Intern / Coop	56	98

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates		<u>B&W</u>	<u>Color</u>	Valve Crew Vehicle (hour) \$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each) \$200
<u>Technology Charge</u>	Large Format (per sq. ft.)			Water Quality Meter (per day) \$100
\$8.50 per hour	Bond	\$0.25	\$0.75	Microscope (each) \$150
	Glossy / Mylar	\$0.75	\$1.25	Pressure Recorder (per day) \$100
	Vinyl / Adhesive	\$1.50	\$2.00	Ultrasonic Thickness Guage (per day) \$275
	Mounting (per sq. ft.)	\$2.00		Coating Inspection Kit (per day) \$275
	Binding (per binding)	\$0.25		Flushing / Cfactor (each) \$500
				Backpack Electrofisher (each) \$1,000
				<u>Survey Grade</u> <u>Standard</u>
				Drone (per day) \$200 \$100
				GPS (per day) \$150 \$50

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. For 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, these services will be billed at a cost times a multiplier of 1.10. 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/or rates will be adjusted annually in February. Last updated 2024.

350022024

Exhibit "C"
Certificate(s) of Insurance



ADDITIONAL REMARKS SCHEDULE

AGENCY Ames & Gough		NAMED INSURED Freese and Nichols, Inc. 801 Cherry Street, Suite 2800 Fort Worth, TX 76102	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance**

**Description of Operations/Locations/Vehicles:
policies include a Waiver of Subrogation in favor of the Additional Insured where permissible by state law and when required by written contract. 30-day Notice of Cancellation will be issued for the General Liability, Auto Liability, Umbrella Liability, Workers Compensation and Professional Liability policies in accordance with policy terms and conditions.**

Exhibit “D”
City of College Station
Standard Form of Agreement between
City and Construction Manager at Risk

**If the plans and specifications from the RFP/CSP are not physically inserted here, then
they are fully incorporated into this contract by reference.**

RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO REIMBURSE CERTAIN EXPENDITURES WITH
PROCEEDS FROM DEBT

WHEREAS, the City of College Station, Texas (the "City") is a home-rule municipality and political subdivision of the State of Texas;

WHEREAS, the City expects to pay expenditures in connection with the design, planning, acquisition and construction of the projects described on Exhibit "A" hereto (collectively, the "Project") prior to the issuance of obligations by the City in connection with the financing of the Project from available funds;

WHEREAS, the City finds, considers, and declares that the reimbursement of the City for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse itself for such payments at such time as it issues obligations to finance the Project;

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS THAT:

Section 1. The City reasonably expects it will incur debt, as one or more series of obligations, with an aggregate maximum principal amount not to exceed \$17,250,000, for the purpose of paying the aggregate costs of the Project.

Section 2. All costs to be reimbursed pursuant hereto will be capital expenditures. No tax-exempt obligations will be issued by the City in furtherance of this Statement after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

Section 3. The foregoing notwithstanding, no tax-exempt obligation will be issued pursuant to this Statement more than three years after the date any expenditure which is to be reimbursed is paid.

PASSED AND APPROVED THIS 25th DAY OF April, 2024.

John Nichols, Mayor

ATTEST:

Tanya Smith, City Secretary

(Seal)

APPROVED:

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

McCall, Parkhurst & Horton L.L.P.
Bond Counsel

Exhibit "A"

The project to be financed that are the subject of this Statement is:

Wells Nos 10, 11, and 12 and Collection Line (\$17,250,000)

This project includes the design on wells nos. 10, 11, and 12 as well as an associated water collection line. This contract would also provide construction phase services for the construction of the wells and the collection line. Construction is anticipated to begin in late 2025.

Lake Bry

San

1687

SUNSET ESTATES

EL CAMINO REAL ESTATES

Sandy Point Rd

TX-OSR

OSR

Union Pacific Railroad

Well #10

Well #11

Well #12

Fortex Grass

1687

