

**PROFESSIONAL SERVICES AGREEMENT
FOR
North and 800' PZ Elevated Storage Tanks**

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Agreement is entered into by and between the City of Pflugerville, a Texas Municipal Corporation (“City”), acting by and through its City Manager, and Freese and Nichols, Inc. (“Consultant”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“City Manager” shall mean the City Manager and/or his designee.

II. TERM

2.1 This agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in Exhibit A which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the City Manager. The determination made by City Manager shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to City Manager. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant’s work not be satisfactory to City Manager; however, City shall have no obligation to terminate and

may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by City Manager, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed one-million two-hundred thirty-three thousand one hundred and sixty-nine dollars (\$1,233,169.00) as total compensation, to be paid to Consultant as further detailed in Exhibit B.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the City.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be the City Manager. Payment will be made to Consultant following written approval of the final work products and services by the City Manager. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by Consultant shall be at the City's sole risk and without liability to the Consultant.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such

questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return said documents to City prior to or at the conclusion of said retention.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 *Termination Without Cause.* This Agreement may be terminated by either Party upon 15 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 *Termination For Cause.* Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 *Defaults With Opportunity for Cure.* Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 *Termination By Law.* If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any

other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 *Termination not sole remedy.* In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to: City of Pflugerville
Attn: Patricia Davis, P.E.
City Engineer
P.O. Box 589
Pflugerville, Texas 78691

If intended for Consultant, to: Freese and Nichols, Inc.
Kendall King, P.E.
10431 Morado Circle
Austin, TX 78759

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled "2.0 and 2.5 MG Elevated Storage Tanks" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

City of Pflugerville

Insurance Requirements

Consultant performing work on City property or public right-of-way for the City of Pflugerville shall provide the City a certificate of insurance evidencing the coverage provisions identified herein. Consultant shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor's policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Pflugerville.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

Type of Insurance	Amount of Insurance	Provisions
Commercial General (Public) Liability to include coverage for: Premises/Operations	1,000,000 per occurrence, 2,000,000 general aggregate Or	City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage
Products/ Completed Operations	2,000,000 combined single coverage limit	City to be provided a waiver of subrogation
Independent Contractors		City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors
Personal Injury		
Contractual Liability		
Business Auto Liability	1,000,000 combined single limit	City to be provided a waiver of subrogation
Workers' Compensation & Employers Liability	Statutory Limits 1,000,000 each accident	City to be provided a waiver of subrogation
Professional Liability	1,000,000	

Questions regarding this insurance should be directed to the City of Pflugerville (512) 990-6100. A contract will not be issued without evidence of Insurance. City will only accept the ACORD 25 or ISO certificate of insurance forms.

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

City of Pflugerville
Capital Improvement Program
P.O. Box 589
Pflugerville, Texas 78691-0589

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to the City***, as respects operations and activities of, or on behalf of, the named insured

performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Pflugerville where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Pflugerville for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT's agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property

damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

10.3 Duty to Defend – Consultant covenants and agrees to hold a DUTY TO DEFEND the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the CITY, the CITY'S agent, the CITY'S employee or other entity, excluding the CONSULTANT or the CONSULTANT'S agent, employee or sub-consultant, over which the CITY exercises control. CONSULTANT is required under this provision and fully satisfies this provision by naming the CITY and those representatives listed above as additional insured under the CONSULTANT'S general liability insurance policy and providing any defense provided by the policy upon demand by CITY.

10.4 CONSULTANT is required to perform services to the City under the standard of care provided for in Texas Local Government Code § 271.904 (d)(1-2).

10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

10.6 Force Majeure - City agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this

Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Holt Engineering; Walker Partners; Boswell's Consulting Testing Services; Amaterra Environmental, Inc. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Consultant. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Consultant acknowledges that it is informed that the Charter of the City of Pflugerville and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 11.06 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it will comply with the City’s Ethics Code.

13.3 Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Consultant a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission (“TEC”), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Consultant understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC’s website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Consultant with respect to the proper completion of the TEC Form 1295.

XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and, if applicable, subject to formal approval by the City Council.

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of Pflugerville, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal,

or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.

19.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in Travis County, Texas.

XX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

Attachment "A" - Scope of Services, including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule

XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XIV. Amendments.

XXV. MISCELLANEOUS CITY CODE PROVISIONS

25.1 Representations and Warranties by Consultant. If Consultant is a corporation, partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

25.2 Franchise Tax Certification. A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

25.3 Eligibility Certification. Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Pursuant to Chapter 38, *City of Pflugerville Code of Ordinances*, Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

25.5 Texas Family Code Child Support Certification. Consultant certifies that they are not delinquent in child support obligations and therefore is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

25.6 Texas Government Code Mandatory Provision. The City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270.002) by accepting this rider, the Consultant hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the Consultant hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

EXECUTED and **AGREED** to as of the dates indicated below.

**CITY OF
PFLUGERVILLE**

FREESE AND NICHOLS, INC.

(Signature)

(Signature)

Printed Name: Sereniah Breland

Printed Name: Kendall King, P.E.

Title: City Manager

Title: Vice President

Date: _____

Date: _____

APPROVED AS TO FORM:

Charles E. Zech
City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

Exhibit A
City of Pflugerville
2.0 MG and 2.5 MG Elevated Storage Tanks Project
Scope of Work – Freese and Nichols, Inc.

PROJECT UNDERSTANDING

Freese and Nichols, Inc. (CONSULTANT) was selected by the City of Pflugerville (OWNER) to provide professional services for the proposed 2.0 and 2.5 million-gallon (MG) Elevated Storage Tanks (ESTs) project located within the 800' and Central Pressure Zones, respectively. In addition to the proposed ESTs, professional services will be provided for the demolition of the existing 1.0-MG standpipe located at the site of the proposed 2.5-MG EST.

Professional services include design, bid and construction phase services for both the 2.0-MG and 2.5-MG ESTs with associated piping, appurtenances, and site improvements. The elevated storage tanks will be composite tanks meeting AWWA D107 criteria. The proposed tank sites will include concrete pavement, yard piping, site lighting and improvements as follows:

2.0 MG Elevated Storage Tank

- A. The elevated storage tank will be located on City property at the existing water treatment plant.
- B. DCS Engineering is providing a master plan for the WTP site, and FNI will coordinate with them for the tank's location.
- C. The required site for the tank will be approximately 300'x300' and all civil improvements provided by FNI are anticipated to be limited to within that area except for the access road. FNI will extend existing roads at the plant to the elevated tank. A secondary access driveway from Weiss Lane is not included.
- D. FNI will extend the water line serving the tank approximately 150' from the tank, where the design of subsequent water line improvements will be provided by CP&Y Engineering. FNI will coordinate with CP&Y for the connection point for the two projects.
- E. A high service pump station will be designed by others, and no coordination with the consultant is anticipated.
- F. Drainage improvements for the site will be provided by others based on the site master plan and high service pump station design.

2.5 MG Elevated Storage Tank

- A. The elevated storage tank will be located on City property east of the Pflugerville Police Department.
- B. Halff Associates is providing a master plan for the site, including all paving and drainage design. FNI will coordinate with them for the tank's location.
- C. The required site for the tank will be approximately 300'x300' and all civil improvements provided by FNI are anticipated to be limited to within that area except for the 24" water line extension. FNI will extend a 24" water line from the tank site approximately 600' north to connect to the existing water distribution system within the Pfennig Lane right of way.

- D. The existing standpipe at the site will be demolished as part of this project. No site improvements other than general site restoration and seeding are included within this scope.

Miscellaneous

- A. The Project will be compiled under one (1) bid package and constructed by a single contractor. Project will follow the standard low bid process and will not be procured using the competitive sealed proposal process.
- B. The City anticipates cellular antennas on the tanks. FNI will include conduit hangers within the tank and conduits and pull boxes to facilitate the inclusion of antennas on the tank. FNI will provide a general layout of locations for cellular buildings on the site. The design of the buildings, foundations, electrical, etc. associated with the actual buildings are not included within this project.
- C. IBC Chapter 17 “Special Inspections” are anticipated as being required during construction of the tanks.
- D. Tanks will include logos and lighting systems similar to the City’s Heatherwilde Elevated Storage Tank.
- E. No landscaping improvements are anticipated or will be provided by Others.
- F. No water modeling or alternative site location evaluations are included within this scope.
- G. Traffic Control and Storm Water Pollution Prevention Plan will be provided by the Contractor/Others.
- H. A preliminary engineering report will not be required for the project.
- I. Any third-party material testing or material inspection, such as soil densities, concrete testing, etc. as relating to IBC Chapter 17 Special Inspections is not included within this scope. An amendment will be required to add these services prior to construction based on the project requirements.

ARTICLE I

BASIC SERVICES: After authorization from the OWNER, CONSULTANT shall proceed with the Basic Services as described below. CONSULTANT will provide monthly progress reports and schedule updates to the OWNER. CONSULTANT shall render the following professional services in connection with the development of the Project:

- A. **PROJECT MANAGEMENT:** Upon execution of this AGREEMENT and upon receiving a Notice to Proceed from the OWNER, CONSULTANT will provide the project management services for each phase of as follows:

CONSULTANT shall coordinate internally and with the OWNER for successful project initiation, planning, execution, monitoring/controlling and closeout. CONSULTANT shall manage scope, time, cost, quality, staff resources, communications, risk and procurements as necessary. This includes but is not limited to:

1. Consult with the OWNER: to review the scope of services, verify the OWNER’S requirements for the Project and to review available data.
2. Monthly Invoicing: FNI will prepare and submit monthly invoices to the OWNER for payment in accordance with Section CO-1.
3. 1-Page Monthly Reports: FNI will prepare and submit monthly status reports to the OWNER with FNI’s monthly invoice. Monthly status reports will comprise a one page summary of the progress to date on the project, work completed during the prior month, work anticipated to

be completed during the upcoming month, and discussion of any scope, schedule, or budget issues that may need to be resolved.

4. Quality Assurance/Quality Control: FNI will develop and implement a QA/QC plan for the work.
5. Prepare Subconsultant Agreements with:
 - a. Holt Engineering – Geotechnical Engineering
 - b. Walker Partners - Surveying
 - c. Boswell's Consulting Testing Services – QC and Constructability Review/Construction Inspection
 - d. Amaterra Environmental, Inc. (if required) – Archeological Desktop Study (if required, additional service)

B. 30% Design Phase: Upon execution of this AGREEMENT and upon receiving a Notice to Proceed from the OWNER, CONSULTANT shall provide professional services in this phase as follows:

1. 30% DESIGN PHASE: Prepare 30% Design Services that includes:
 - a. FNI will issue design memo(s) to discuss any design options or recommendations for OWNER's review and direction, including site evaluation and recommendations for the proposed tanks.
 - b. Project Plans for this phase shall consist of:
 - 1) Plan(s) of existing conditions, including site survey
 - 2) Proposed site plans, including yard piping and pavement improvements
 - 3) Plan and profile sections of the elevated storage tank(s)
 - c. FNI will provide computer generated renderings for the two tanks. Renderings will include Two (2) site renderings per tank, one during day and one during night.
 - d. FNI will coordinate with tank manufacturers to discuss the project and their construction requirements.
 - e. FNI will evaluate power availability and improvements required at the proposed site and coordinate with the electrical utility provider.
 - f. FNI will coordinate with the utility companies for any necessary utility relocations/adjustments that may be required and indicate on the preliminary plans.
 - g. Stormwater and Overflow Analysis will be provided by Others for both project sites. FNI will provide tank overflow rates for design by others.
2. ENVIRONMENTAL SERVICES:
 - a. Site Visit:

Prior to making field visits, FNI will obtain information for the vicinity such as soils maps, National Wetland Inventory maps, topographic maps, floodplain maps, and other readily available, pertinent data. This information will be evaluated to guide the field survey described below. FNI's scientists will conduct a pedestrian survey of the proposed tank

sites to identify environmental issues and document baseline conditions, including delineation of wetlands and identification of waters of the U.S.

b. Threatened and Endangered Species:

Conduct reconnaissance-level field surveys within the area of the proposed pipeline corridor to identify potential habitat and document any threatened or endangered (T&E) species encountered. Emphasis will be on federally listed species, but the Texas Parks and Wildlife Department T&E species database will be reviewed and documented. The results of the T&E species review will be documented in a site visit memorandum.

c. Tree Survey:

FNI staff will perform two (2) tree surveys in accordance with Section 1 “Tree Survey” from the City’s “Tree Technical Manual: Standards and Specifications” dated August 25, 2009. The surveys will locate and identify “Protected and Unprotected Trees” as defined in Section 1.2 of the aforementioned document. Using a sub-meter accuracy GPS Unit, the trees will be tagged and include tree location, species, and diameter of the trunk measured at 4.5 feet above ground level. FNI will download the GPS data for processing and prepare a tree survey report documenting observations made during the survey. The report will include a table with the trees noted during the survey, existing topographical contours, location of property lines, setbacks, easements, and existing right-of-way.

d. Texas Antiquities Code Compliance:

Freese and Nichols, Inc. environmental scientists will perform a desktop survey and will provide coordination with Texas Historic Commission (THC) in accordance with the requirements of the Antiquities Code of Texas in an effort to verify the project will not disturb historic/archeological sites. Subsequent activities that may be required by the THC, such as onsite investigations, may require the services of a qualified archeologist as indicated in the Supplemental Services.

3. TOPOGRAPHIC SURVEY: FNI will retain Walker Partners to conduct surveying services as follows:

- a. The proposed survey scope of work will consist of a boundary survey for both tanks sites and adjacent right of ways for connection to existing utilities (this will include locating underground utilities as marked by Texas One Call and as located by the City of Pflugerville).
- b. Establish vertical and horizontal controls for the project.
- c. Provide topographical survey and survey of existing features and structures within the project limits including right-of-way lines, property lines, fences, pavement, signs, utility markers, visible utilities, manhole flow lines, trees, etc.
- d. Research utilities and easements within the project boundaries. Obtain drawings of existing agency and municipal owned utilities and include locations of these utilities in the survey.
- e. Coordinate utility marking with Dig Tess (level B), conduct survey and locate utilities within the project boundary. Obtain the services of a utility locator service (such as DIGTESS) and coordinate flagging of existing franchise utilities. Tie in the locations of the existing utilities on the survey.

- f. Provide control staking for the project. Construction staking shall be provided by the Contractor.
 - g. Surveyor will stake bore holes for the geotechnical engineer.
 - h. FNI will coordinate with Owner's Right-of-Way Acquisition Consultant to define required easement(s). Easement acquisition services shall be by Owner's Right-of-Way Consultant.
 - i. Surveyor will provide documents for one (1) utility easement for the 2.5 MG tank 24" water line.
4. HEAVY METALS TESTING: FNI will collect paint samples from the existing standpipe tank to test the tank coating system for heavy metals. FNI will retain an environmental testing laboratory, as a subconsultant to perform heavy metal analysis for the existing 1.0-MG standpipe tank coating system and soil samples at the tank site. Scope includes:
- a. A total of two (2) existing standpipe tank coating samples
 - b. A total of five (5) soil samples of the standpipe tank site
 - c. If contamination is found at the site, additional soil samples and site visits may be required to establish the limits of the contaminated area. Additional soil samples and visits above the total included above is an additional service.
 - d. FNI will prepare a technical memorandum report documenting the testing procedures and analytical results and determine if any special provisions will be required during the demolition of the existing standpipe tank based on the findings.
5. ENGINEER'S OPINION OF PROBABLE COST (EOPC): CONSULTANT will provide a Preliminary EOPC for the entire Project.
6. MEETINGS: CONSULTANT will prepare meeting agendas and minutes for all meetings and workshops listed below:
- a. Attend one (1) review workshop to review the OWNER'S comments on the 30% Design.
 - b. Attend two (2) coordination meetings with design consultants and OWNER.
 - c. Attend one (1) coordination meetings with cellular customers with OWNER.
7. DELIVERABLES: Provide copies of plans and other data to the OWNER as required. Furnish electronic and hard copies as shown for the following deliverables:
- a. Project Management
 - 1) Monthly 1-Page reports – one (1) electronic copy
 - 2) Agendas and Meeting minutes for all meetings – one (1) electronic copy
 - 3) Updated project schedule – one (1) electronic copy
 - b. Elevated Tank Renderings – one (1) electronic copy
 - c. Memorandums
 - 1) Environmental Memorandum – one (1) electronic copy
 - 2) Heavy Metals Test Results – one (1) electronic copy

- d. 30% Design Phase Plans
 - 1) One (1) electronic copy by FTP
 - 2) Four (4) sets of standard 11"x17" half-size plans
 - 3) 30% EOPC - one (1) electronic copy
 - e. Comment response form with written responses to the City's 30% comments – one (1) electronic copy.
- C. **60% DESIGN PHASE:** Upon receiving comments from the OWNER on the 30% Design, CONSULTANT shall provide professional services in this phase as follows:
1. **60% DESIGN PHASE:** Prepare 60% Design Services that includes:
 - a. FNI will provide 60% design plans including site improvements and tank details.
 - b. FNI will provide 60% contract documents and specifications. FNI will use FNI standard contract documents and specifications for the project. FNI will coordinate any specific standards for approved materials, etc. with the City's standard technical specifications.
 - c. FNI will coordinate with tank manufacturers to discuss the project and their construction requirements.
 2. **GEOTECHNICAL INVESTIGATION:** FNI will retain Holt Engineering, which is a geotechnical drilling and testing laboratory, as a subconsultant and perform the following tasks:
 - a. Coordinate field activities for site access.
 - b. Contact Texas One Call System and local utilities to locate buried utilities within existing easements and right-of-way.
 - c. For each EST, provide four (4) borings to a depth of 30 feet at the proposed tank pedestal perimeter and one (1) boring to a depth of 50 feet at center of the proposed tank pedestal.
 - d. During drilling, obtain soil samples for testing using 3-inch diameter Shelby tubes for cohesive soils and using a 2-inch diameter split-barrel sampler for non-cohesive soils. Perform Texas Cone Penetrometer (TCP) tests in rock and rock-like material. Backfill borings with cuttings and plug the upper foot of each boring with quick-setting concrete mix.
 - e. During drilling, observations of seepage and groundwater will be recorded.
 - f. Provide an engineer or geologist to log the borings, direct the drilling, record the blow counts from field tests, and handle and store the samples.
 - g. Select samples for laboratory testing, assign tests, and review test results. Tests are expected include classification tests (liquid and plastic limits and percent passing the #200 Sieve), moisture contents, pressure swell tests, and unconfined compression tests.
 - h. Review subsurface conditions and soil properties found by the field and laboratory work and discuss the implications for design with FNI engineers.
 - i. Holt Engineering will prepare a technical memorandum of the geotechnical investigation presenting the boring locations, boring logs, lab test results and a discussion of general subsurface conditions at the site and their impact on the design. The report will include

recommendations for subgrade preparation below the tanks, recommended foundation type(s) and allowable loading, pavement design and a general discussion of construction issues.

3. **MEETINGS:** CONSULTANT will prepare meeting agendas and minutes for all meetings and workshops listed below:
 - a. Attend one (1) review workshop to review the OWNER'S comments on the 60% Design.
 - b. Attend two (2) coordination meetings with design consultants and OWNER.
 - c. Attend one (1) coordination meetings with cellular customers with OWNER.
4. **DELIVERABLES:** Provide copies of plans and other data to the OWNER as required. Furnish electronic and hard copies as shown for the following deliverables:
 - a. Monthly 1-Page reports – one (1) electronic copy
 - b. Agendas and Meeting minutes for all meetings – one (1) electronic copy
 - c. Updated project schedule – one (1) electronic copy
 - d. 60% EOPC – one (1) electronic copy
 - e. Geotechnical Report – one (1) electronic copy and one (1) hard copy
 - f. 60% project drawings and specifications
 - 1) One (1) electronic copy by FTP
 - 2) Four (4) sets of standard 11" x 17" half-size plans
 - 3) Four (4) copies of the project contract documents and specifications
 - g. Comment response form with written responses to the City's 60% comments – one (1) electronic copy

D. 90% DESIGN PHASE: Upon receiving comments from the OWNER on the 60% Design, CONSULTANT shall provide professional services in this phase as follows:

1. **90% DESIGN PHASE:** Prepare 90% Design Services that includes:
 - a. If necessary, FNI will issue design memo(s) to discuss any design options or recommendations for OWNER's review and direction.
 - b. FNI will provide 90% complete design plans including site improvements and tank details.
 - c. FNI will provide 90% complete contract documents and specifications. The project will utilize the Competitive Sealed Proposal method of procurement. FNI will use FNI standard contract documents and specifications for the project. FNI will coordinate any specific standards for approved materials, etc. with the City's standard technical specifications.
 - d. FNI will provide the storm water pollution prevention plan for the project.
 - e. FNI will coordinate with the FAA for permitting the proposed elevated tanks.
 - f. FNI will coordinate with tank manufacturers to discuss the project and their construction requirements.
2. **MEETINGS:** CONSULTANT will prepare meeting agendas and minutes for all meetings and workshops listed below:

- a. Attend one (1) review workshop to review the OWNER'S comments on the 90% Design.
 - b. Attend one (1) public meeting/open house related to the project. The City will provide the location for the public meeting. FNI will provide a power point presentation, if required.
 - c. Attend one (1) City Council meeting related to the project.
 - d. Attend two (2) coordination meetings with design consultants and OWNER.
 - e. Attend one (1) coordination meetings with cellular customers with OWNER.
3. **DELIVERABLES:** Provide copies of plans and other data to the OWNER as required. Furnish electronic and hard copies as shown for the following deliverables:
- h. Monthly 1-Page reports – one (1) electronic copy
 - i. Agendas and Meeting minutes for all meetings – one (1) electronic copy
 - j. Updated project schedule – one (1) electronic copy
 - k. 90% EOPC – one (1) electronic copy
 - l. 90% project drawings and specifications
 - 1) One (1) electronic copy by FTP
 - 2) Four (4) sets of standard 11" x 17" half-size plans
 - 3) Four (4) copies of the project contract documents and specifications
 - m. Comment response form with written responses to the City's 90% comments – one (1) electronic copy.

E. 100%/ISSUED FOR BID (IFB) DESIGN PHASE: Upon receiving comments from the OWNER on the 90% Design Phase deliverables, CONSULTANT shall provide professional services in this phase as follows:

- 1. **100%/IFB DESIGN:** CONSULTANT will provide the following services:
 - a. Incorporate the OWNER'S 90% comments to produce 100%/Issued for Bid plans and specifications.
 - b. Prepare 100%/IFB project drawings and specifications for each proposed tank.
 - c. Prepare 100% EOPC.
 - d. FNI will coordinate with tank manufacturers to discuss the project and their construction requirements.
 - e. FNI will submit the tanks to the Federal Aviation Administration (FAA) to verify if any special restrictions are required for the project.
 - f. FNI will coordinate with the utility companies for any necessary utility relocations/adjustments that may be required and indicate on the preliminary plans.
 - g. FNI will submit the project to the TCEQ for construction permitting.
- 2. **MEETINGS:** CONSULTANT will prepare meeting agendas and minutes for all meetings and workshops listed below:
 - a. Attend one (1) review workshop to review the OWNER'S comments on the 100% Design.

3. **DELIVERABLES:** Provide copies of plans and other data to the OWNER as required. Furnish electronic and hard copies as shown for the following deliverables for 100%/IFB Design Phase:
 - a. Monthly 1-Page reports – one (1) electronic copy
 - b. Agendas and Meeting minutes for all meetings – one (1) electronic copy
 - c. Updated project design/bid/construction schedule – one (1) electronic copy
 - d. 100% EOPCC for each tank – one (1) electronic copy
 - e. Issued for Bid drawings and specifications:
 - 1) One (1) electronic copy by FTP
 - 2) Four (4) sets of standard 11"x17" half-size plans
 - 3) One (1) 22"x34" full-size plan sets
 - 4) Four (4) copies of the project contract documents and specifications

F. BID OR NEGOTIATION PHASE: Upon completion of the design services for the project and approval of bid drawings and specifications by the City, FNI will proceed with the performance of services in this phase as follows:

1. **BID PHASE SERVICES**

- a. The City will set up the projects on CivCast to distribute the bid documents to prospective bidders and plan rooms. Electronic sets of documents will be made available at no charge to plan holders. Hard copy plans will not be provided by the Engineer except as indicated below.
- b. Assist City by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.
- c. Tabulate and analyze the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project.
- d. Recommend award of contracts or other actions as appropriate to be taken by City.
- e. Provide Notice of Award of Contract to the Contractor and provide letter with directions for the execution of the contract documents.
- f. Assist City in the preparation of the Construction Contract Documents.

2. **MEETINGS:**

- a. Prebid Meeting: Assist the City in conducting one (1) pre-bid conference for the construction project and coordinate responses with City. Response to the pre-bid conference will be in the form of addenda issued after the conference.
- b. Bid Opening: Attend one (1) project bid opening and open bids as required by the City.

3. **DELIVERABLES:**

- a. Conformed Construction Documents
 - 1) For contract execution:
 - a) Three (3) copies of the contract documents

- 2) For City during construction:
 - a) Two (2) hard copies in 22"x34" (full-size) format
 - b) One (1) hard copies in 11"x17" (half-size) format
 - c) Three (3) hard copies of contract documents and project specifications.
 - d) One (1) electronic copy in PDF via FTP
- 3) For Construction Contractor:
 - a) Two (2) hard copies in 22"x34" (full-size) format
 - b) Two (2) hard copies of contract documents and project specifications.
 - c) One (1) electronic copy in PDF via FTP

G. CONSTRUCTION PHASE: Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below.

1. FNI will endeavor to protect the 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.
2. 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.
3. FNI will furnish construction contract administration services in support of on-site inspection personnel provided by the Owner.
4. CONSTRUCTION PHASE SERVICES:
 - a. Establish and maintain a project documentation system consistent with the requirements of the construction Contract Documents.
 - b. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation.
 - c. Produce monthly reports indicating the status of all submittals in the review process.
 - d. Review contractor's submittals, including:
 - 1) Requests for information
 - 2) Modification requests
 - 3) Shop drawings
 - 4) Schedules
 - 5) Certified test reports
 - 6) Other submittals
 - e. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
 - f. Notify City of Contractor's 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.

- g. Interpret the drawings and specifications for City and Contractor. Investigations, analyses, and studies requested by the Contractor and approved by City, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
 - h. Consult with and advise the City during construction, make recommendations to the City regarding materials and workmanship, and prepare change orders with the City's approval.
 - i. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and test equipment, and other data pursuant to the General Conditions of the Construction Contract.
 - j. Review and comment on monthly and final estimates for payment to Contractor pursuant to the General Conditions of the Construction Contract.
 - k. Conduct, in company with the City's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Contract Documents, and review and comment on the Certificate of Completion and the recommendation for final payment to the Contractor.
5. Thresh-hold Spot Surface Preparation and Coating Inspection Service: FNI will retain Boswell Consulting as a subconsultant and perform the following tasks:
- a. Provide Thresh-hold/Part Time Spot Surface Preparation and Coating Inspection Service during the interior and exterior coating processes for both elevated tanks. Resident representation or full-time inspection services are an additional service.
 - b. Services include:
 - 1) Review of project plans and specifications to evaluate that proper surface preparation and coating application techniques are being followed.
 - 2) Submittal of Daily Reports on the days of inspections, including a record of ambient weather conditions, material batch numbers, general and sub-contractor information, and a complete summary of work completed.
 - 3) Checking coating products to verify they meet specs.
 - 4) Checking blast material and anchor profiles of steel.
 - 5) Checking mixing and application of each of the coating products.
 - 6) Checking dry film thickness after each coat is cured and before next coat is applied.
 - 7) Monitoring testing of all immersed areas for pin-holes or holidays.
 - c. Services include providing a coating inspector for a total of 36 individual visits for coating inspection for each tank. During construction FNI will track the inspector's hours and notify the City if additional hours are required to complete the project.
6. Welding Inspection Service: FNI will retain Boswell Consulting as a subconsultant and perform the following tasks:
- a. Provide welding inspection services during both tank constructions. Resident

representation or full time inspection services are an additional service.

b. Inspector shall perform inspection and testing per AWWA D107.

c. Services include:

- 1) Providing a welding inspector at the site for a total of 28 individual visits for steel erection and welding inspection for each tank. During construction FNI will track the inspector's hours and notify the City if additional hours are required to complete the project.
- 2) X-Ray Testing of welds – X-ray testing is not included within the scope of work and will be provided by the Contractor.

7. Construction Site Visits/Construction Progress Meetings: Make site visits appropriate to the stage of construction to the site and when requested by OWNER, 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 OWNER against defects and deficiencies in the work of Contractors and will report any observed deficiencies to OWNER. Visits to the site in excess of the specified number below are an additional service. The anticipated inspections are as follows, refer to supplementary services for additional inspections:

a. Construction Site Visits

- 1) Weekly Site Visits – FNI will provide site visits twice per week during the duration of the project when work is being performed by the Contractor for a maximum of 136 visits.
- 2) Special Inspection Site Visits
 - a) Concrete Foundation: Up to three (3) visits per EST
 - i. Verify form dimensions, check anchor bolts & steel placement.
 - ii. Observe concrete placement.
 - b) Concrete Pedestal Wall Inspection:
 - iii. Up to 31 inspections: Assuming 25 concrete pours and 6 extra visits for re-inspection. (FNI has no control over the wall pour height provided by the Contractor, which can vary from 4 – 12', which can impact the number of concrete pours to be witnessed.)
 - iv. Review of mock construction walls, maximum of four visits.
 - v. Check steel reinforcement in wall section prior to first concrete placement.
 1. Verify steel reinforcement is correct size and in correct location.
 2. Verify correct space between steel mats to allow proper concrete placement.
 - vi. Observe concrete placement/verify lab checking for slump, air, temperature cylinders pulled.
 - vii. Observe removal of forms and check for voids, monitor repair of bug holes.

- b. Meetings
 - 1) Preconstruction Meeting: FNI will assist the OWNER in conducting two (2) pre-construction conferences with each Contractor. FNI will conduct the meeting and prepare meeting addenda and minutes.
 - 2) Monthly Meetings: Monthly site meetings will be scheduled to coincide with weekly site visits. FNI will conduct the meetings and prepare meeting agendas and minutes. Meetings will include discussions of project effort today, projected effort, schedule, submittal status, contractor questions, etc.
 - 3) Coating Meetings:
 - 1. Meeting with Contractor prior to start of field surface preparation and coatings, two (2) total.
 - 2. Meeting with Contractor and mock structure coatings prior to start of interior coating application, two (2) total.
 - c. Substantial Completion Inspection: up to two (2) visits per EST
 - d. Punch List Inspection: up to two (2) visits per EST
Conduct, in company with OWNER'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.
 - e. Final Inspection: Up to two (2) visits per EST
 - f. 2-Year Warranty Inspection: Up to two (2) visits per EST
FNI will visit the site on or before the expiration of the 2-year warranty period and note any deficiencies. FNI will prepare a list of deficiencies and provide that list to OWNER and Contractor.
 - g. Warranty Corrections: FNI will be onsite for a maximum of two 8-hour days to observe any corrections identified at the 2-Year Warranty Inspection.
8. DELIVERABLES:
- a. Monthly 1-Page Reports.
 - b. Project site visit memos and construction progress meeting minutes
 - c. Project Record Drawings:
 - 1) One (1) set of full size plans
 - 2) One (1) CD with Record Drawings in PDF Format, project survey files, project CAD files in AutoCad or Microstation formats and shapefiles in GIS format if needed.

ARTICLE II

SUPPLEMENTARY SERVICES: The following items are to be included in the Contract but may only be used as directed by OWNER.

None

ARTICLE III

ADDITIONAL SERVICES: Additional Services to be performed by CONSULTANT, if authorized by the OWNER, which are not included in the above described basic or supplemental services, are described as follows:

- A. Phase I Environmental Site Assessment(s) (ESA).
- B. Alternative sources of funding including, but not limited to, Texas Water Development Board (TWDB) funding.
- C. Interviews for bidders during the competitive sealed bid process.
- D. Subsurface utility exploration (SUE) may be provided by the City as directed by the Engineer. Surveyor shall coordinate and survey uncovered utilities.
- E. Adding a restroom or any other plumbing to the tank improvements.
- F. Landscaping and irrigation for the site.
- G. Assistance with zoning, platting, and specific use permits.
- H. No improvements to offsite drainage or infrastructure are included as part of this project. If offsite improvements are required to handle site and overflow water, FNI will make recommendations and a fee will be negotiated prior to starting work.
- I. A backup generator or coordination of alternative power sources is not included in the design.
- J. Archeological Desktop Study: If further archeological study is required based on the THC coordination performed by FNI, Amaterra Environmental, Inc., a Registered Professional Archaeologist will be retained as a subconsultant to conduct a desktop database review of known cultural resources within and near the project area and make recommendations to comply state and federal laws and regulations. Shovel testing and excavation scope is based on a 1-acre project site. Any additional area is an additional service.
- K. 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.
- L. Performing investigations, studies and analyses of Contractor's substitutions of equipment and/or materials or deviations from the drawings and specifications (does not include "approved by ENGINEER" designation as included in the Contract Documents).
- M. Performing investigations, studies, and analysis of work proposed by construction Contractor to correct defective work.
- N. Services required to resolve bid protests or to rebid the projects for any reason.
- O. Construction meetings and/or visits to the site during the construction phase in excess of the number of trips included in the Basic Services for periodic site visits, coordination meetings, or contract completion activities.
- P. Full-time construction Resident Representation services.

- Q. Any material testing including, but not limited to, 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. Any material testing, including laboratory test of soils including moisture density relationship, Atterberg limits, and sieve analysis, shall be an additional service to be determined during design.
- R. Any services required as a result of default of the Contractor or the failure, for any reason, of the Contractor to complete the work within the contract time.
- S. Providing services to review or evaluate construction Contractor claim(s), provided said claims are supported by causes not within the control of the FNI.
- T. Providing value engineering studies or reviews of cost savings proposed by construction Contractor after bids have been submitted.
- U. Providing follow-up professional services during Contractor's warranty period outside the scope described in G.7.f and g.
- V. Fees associated with GLO easements/leases or other permits.
- W. Expert representation at legal proceedings or at contested hearings.
- X. Competitive sealed proposals or other alternative procurement methods
- Y. 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.
- Z. Traffic control design.
- AA. Construction surveying.
- BB. Aesthetic enhancements to the proposed tank and/or the existing tank beyond color changes.
- CC. Adding metering equipment to the project.
- DD. Engineering cost for excessive review of shop drawings shall be an additional service. Excessive review of submittals is defined as any review required after the original review has been made and the first resubmittal has been checked to see that corrections have been made. Construction Contractor is required to pay cost of excessive review to Owner in accordance with provisions in the Owner-Contractor Agreement.

Review	Paid by:
1 st	Basic Services
2 nd	Basic Services
3+	Additional Services

- EE. Additional Environmental Services - Freese and Nichols will notify the City if any of the following services will be necessary to comply with USACE permit requirements. The following services can be provided as an additional service and upon written authorization by the City:
 1. Performing special environmental studies and other studies not specifically described in the basic scope of services.
 2. Presence/absence surveys for federally listed threatened/endangered species.

3. Consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species act.
4. Expert witness representation in legal proceedings or contested permit hearings.
5. Application for General Land Office easements.
6. Preparation of permittee-responsible mitigation plans in accordance with the USACE Mitigation Rule dated April 10, 2008 (33 CFR Parts 325 and 332) or other regulations.
7. Cultural resources investigation, mitigation, or data recovery activities.
8. Mitigation monitoring if required by permit conditions.
9. Monitoring for compliance with permit conditions.
10. Testing for site contamination, and remediation of contaminated properties.
11. Archaeological testing requiring excavations by a backhoe or excavator and any other efforts required by the state beyond those specifically indicated in the Basic 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:

ELEVATED STORAGE TANK BID PACKAGE	
Milestone/Deliverable	Calendar Days
Anticipated Notice to Proceed	March 2020
Site Selection Coordination	30 days from Notice to Proceed*
30% Design Phase Submittal	90 days from Site Selection
60% Design Phase Submittal	60 days following Design Review Workshop with the City for 30% Design Submittal
90% Design Phase Submittal	60 days following Design Review Workshop with the City for 60% Design Submittal
100% Design/Bid Phase Documents Submittal	30 days following Design Review Workshop with the City for 90% Design Submittal
TCEQ Review Time	70 Days
Bid Phase	60 Days for Advertisement and Council Approval
Construction Completion	480 Days for Construction
Provide Record Drawings	30 days from Receipt of As-Builts from Contractor

The above schedule is based on the assumption the master planning effort by others has progressed sufficiently within 30 days of NTP to enable final definition of the tank location at each site. If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in OWNER or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation.