

THE STATE OF TEXAS   §     **PROFESSIONAL SERVICES CONTRACT**  
                                     §     **(For Architectural / Engineering Services)**  
COUNTY OF COLLIN   §     **with Freese and Nichols, Inc.**

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THIS CONTRACT is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,<sup>1</sup> by and between the **CITY OF MCKINNEY, TEXAS**, a municipal corporation located in Collin County, Texas, (hereinafter referred to as "CITY"), acting by and through its City Manager or his designee, and **Freese and Nichols, Inc.**, a Texas corporation, ("hereinafter referred to as "CONSULTANT") whose address is 12770 Merit Drive, Suite 900, Dallas, Texas 75251.

W I T N E S S E T H:

WHEREAS, CITY desires to obtain architectural / engineering services from CONSULTANT for CIP project WW2334 – Citywide Inflow & Infiltration Sewer Basin Monitoring; and

WHEREAS, CONSULTANT is an architectural or engineering firm qualified to provide such services and is willing to undertake the performance of such services for CITY in exchange for fees hereinafter specified; NOW, THEREFORE,

IN CONSIDERATION of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

**I.**  
**Employment of Consultant**

CONSULTANT will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the professional level of care and skill ordinarily provided by competent members of the architectural and engineering professions, both public and private, currently practicing in the same or similar locality under the same or similar circumstances and professional license including but not limited to the exercise of reasonable, informed judgments and prompt, timely action considering the ordinary professional skill and care of a competent engineer or architect. If CONSULTANT is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional and national professional standards.

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<sup>1</sup> If this date is omitted, the effective date shall be the date the Agreement is executed by the City.

## II. Scope of Services

CONSULTANT shall perform such services as are necessary to monitor the citywide inflow and infiltration sewer basin, specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

## III. Payment for Services

Total payment for the performance and delivery of the services described herein shall be a sum not to exceed **One Million Six Hundred Fifty-Eight Thousand One Hundred Thirty-Five and No/100<sup>ths</sup> Dollars (\$1,658,135.00)** ("Total Payment Amount"). This Total Payment Amount includes CONSULTANT's "Reimbursable Expenses" as defined herein below.

CONSULTANT will bill CITY for the performance and delivery of the services described herein on a percent complete basis in accordance with Attachment "A" hereto entitled "Fees and Expenses" and will also bill CITY for the "Reimbursable Expenses" identified in Attachment "A"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "A" and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services or trips or incur additional expenses until authorized by CITY in writing to proceed. The scope of services shall be strictly limited. CITY shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless CITY shall have approved in writing in advance (prior to the performance of additional work or expenditure of funds for additional trips or expenses) the payment of additional amounts.

CONSULTANT will be compensated for the following **reasonable and documented** "Reimbursable Expenses," if any, from the Total Payment Amount to the extent such expenses are directly related to CONSULTANT's performance of the Project provided the total amount of such Reimbursable Expenses together with the payment for all professional services to be performed hereunder does not exceed the Total Payment Amount: printing; photocopying; reproduction of drawings and specifications; postage; courier delivery services; long distance telephone calls; and, mileage at the allowable rate established by the Internal Revenue Service (collectively "Reimbursable Expenses"). Any expenses the CITY determines are not reasonable and directly related to CONSULTANT's performance of the Project, and/or which are not properly documented to the CITY, shall remain the sole responsibility of the CONSULTANT. Any expenses that do not fit within any of the categories of Reimbursable Expenses or which expenses are unusual or cumulatively exceed the

amount identified in Attachment "A" or the Total Payment Amount are considered "Extraordinary Expenses" and must be approved in advance by CITY in writing signed by the parties. If approved by CITY in writing in advance, such Extraordinary Expenses may be paid as incurred and billed to the CITY pursuant to this Contract over and above the Total Payment Amount identified in this provision. Any Extraordinary Expenses not approved in writing in advance by the CITY shall remain the sole responsibility of the CONSULTANT.

Each month CONSULTANT will submit to CITY an invoice supporting the percentage of work completed and reimbursable expenses incurred for which payment is sought. Each invoice shall also state the percentage of work completed on the Project through the end of the then submitted billing period, the total of the current invoice amount and a running total balance of the percentage of work completed and reimbursable expenses incurred for the Project to date.

Within thirty (30) days of receipt of each such monthly invoice CITY shall make monthly payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted. Such payments shall be subject to the Texas Prompt Payment Act, Texas Government Code §§ 2251.001, *et seq.*

Nothing contained in this Contract shall require CITY to pay for any work that is unsatisfactory as determined by CITY or which is not submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which CITY may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

#### **IV. Revisions of the Scope of Services**

CITY reserves the right to revise or expand the scope of services after due approval by CITY as CITY may deem necessary, but in such event, CITY shall pay CONSULTANT equitable compensation for such services. In any event, when CONSULTANT is directed to revise or expand the scope of services under this Section of the Contract, CONSULTANT shall provide CITY a written proposal for the entire costs involved in performing such additional services. Prior to CONSULTANT undertaking any revised or expanded services as directed by CITY under this Contract, CITY must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Project.

It is expressly understood and agreed by CONSULTANT that any compensation not specified in Paragraph III herein above may require McKinney City Council approval and is subject to the current budget year limitations.

**V.**  
**Term**

This Contract shall begin on the date first written above and shall terminate when CITY has approved the Project as being final or otherwise terminates this Contract as provided herein.

**VI.**  
**Contract Termination Provision**

This Contract may be terminated at any time by CITY for any cause by providing CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract. CONSULTANT shall invoice CITY for all Services completed and shall be compensated in accordance with the terms of this Contract for all Services performed by CONSULTANT through the date such written notice of termination is received by CONSULTANT.

**VII.**  
**Ownership of Documents**

All materials and documents prepared or assembled by CONSULTANT under this Contract shall become the sole property of CITY and shall be delivered to CITY without restriction on future use. CONSULTANT may retain copies of all drawings, specifications and all other pertinent information for the work in CONSULTANT's files. CONSULTANT shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Contract.

**VIII.**  
**Insurance Requirements**

- A. Before commencing work, the CONSULTANT shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the state of Texas and acceptable to the City of McKinney. The CONSULTANT shall furnish to the City of McKinney Procurement Services Manager certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number and be addressed as follows:

City of McKinney  
c/o Procurement Services  
P O Box 517  
McKinney, TX 75070

1. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
2. Workers' Compensation insurance with Texas statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$500,000 each accident, b) by disease, \$500,000 per employee with a per policy aggregate of \$500,000.
3. Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined single limit of \$1,000,000.
4. Professional Liability Insurance to provide coverage against any claim which the CONSULTANT becomes legally obligated to pay as damages arising out of the performance of professional services caused by error, omission or negligent act with minimum limits of \$1,000,000 each occurrence and \$2,000,000 aggregate.

**NOTE:** If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of the contract and acceptance by the City of McKinney.

- B. With reference to the foregoing required insurance, the CONSULTANT agrees to the following:
1. A waiver of subrogation in favor of City of McKinney, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
  2. The City of McKinney, its officials, employees and officers shall be covered as additional insureds on the Commercial General Liability and Business Automobile Liability policies. Nothing contained in Section XII of this Agreement shall be interpreted or applied as limiting, reducing, or eliminating any obligation or duty that CONSULTANT's insurance carrier may owe to CITY as an additional insured under the CONSULTANT's general liability insurance policies required by this Agreement to provide the CITY with a defense and/or indemnify the CITY for any claim or cause of action, whether one or more, regardless of the proportionate responsibility or liability of the CONSULTANT or the CITY. Neither shall anything contained in this Section VIII be interpreted or applied as providing or otherwise entitling either CONSULTANT, CONSULTANT's insurance carrier or any other party any

right or ability to recover over against CITY any amounts of money attributable to damages, costs, expenses and/or attorneys' fees based on or arising out of a finding of comparative or proportionate responsibility or liability as against the CITY it being understood and agreed that CITY in no way intends by this Agreement to waive its sovereign immunity regarding any claim, suit or cause of action.

3. Policies of insurance shall not be cancelled non-renewed, terminated, or materially changed unless and until thirty (30) days' notice has been given to City of McKinney.
- C. Insurance limits can be met with a combination of primary and excess/umbrella coverage.
  - D. All insurance shall be purchased from insurance companies that meet a financial rating of A-VI or better as assigned by A.M. Best Company or equivalent.
  - E. The CONSULTANT shall require any contractors, sub-contractors, and other persons doing business with or for the CONSULTANT related to the work to maintain at least the insurance as required, or their liability shall be covered by the CONSULTANT.

## **IX.**

### **Right to Inspect Records**

CONSULTANT agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of CONSULTANT involving transactions relating to this Contract. CONSULTANT agrees that CITY shall have access during normal working hours to all necessary CONSULTANT facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. CITY shall give CONSULTANT reasonable advance notice of intended audits.

CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that CITY shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. CITY shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

**X.**  
**Successors and Assigns**

CITY and CONSULTANT each bind themselves and their successors, executors, administrators and assigns to the other party to this contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither CITY nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

**XI.**  
**CONSULTANT's Liability**

Acceptance of the final plans by the CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, associates, agents or sub-consultants.

**XII.**  
**INDEMNIFICATION**

**CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM CONSULTANT'S PERFORMANCE UNDER THIS CONTRACT AND WHICH ARE CAUSED BY THE INTENTIONAL WRONGFUL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONSULTANT OR CONSULTANT'S SUBCONTRACTORS AND THE OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONSULTANT OR CONSULTANT'S SUBCONTRACTORS (THE "INDEMNIFIED ITEMS") SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE § 130.002(B).**

**BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY, AS WELL AS INTELLECTUAL PROPERTY INFRINGEMENT OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER.**

**INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES IN PROPORTION TO THE CONSULTANT'S LIABILITY AND COSTS, COURT**

**COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.**

**XIII.**

**Independent Contractor**

CONSULTANT's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of CITY in the performance of this Contract. No term or provision of or act of CONSULTANT or CITY under this Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondeat superior shall not apply as between CITY and CONSULTANT, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and CONSULTANT.

**XIV.**

**Default**

If at any time during the term of this Contract, CONSULTANT shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then CITY shall have the right, if CONSULTANT shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract. Any such act by CITY shall not be deemed a waiver of any other right or remedy of CITY. If after exercising any such remedy due to CONSULTANT's nonperformance under this Contract, the cost to CITY to complete the work to be performed under this Contract is in excess of that part of the Contract sum which has not theretofore been paid to CONSULTANT hereunder, CONSULTANT shall be liable for and shall reimburse CITY for such excess. CONSULTANT'S liability under this provision shall be limited to the total dollar amount of this Contract.

CITY's remedies for CONSULTANT's default or breach under this Contract shall be limited to one or more of the following remedies which may be exercised separately or in combination at CITY's sole exclusive choice:

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to CITY; or,
- (c) Monetary damages in an amount not to exceed the greater of:



- (1) The amount of any applicable insurance coverage CONSULTANT is required to purchase and maintain under this Contract plus any deductible amount to be paid by CONSULTANT in conjunction with said coverage regardless of whether CONSULTANT has actually purchased and maintained said coverage; or,
- (2) The total dollar amount of this Contract.

The terms of Sections XII entitled Indemnification, and XVII entitled Confidential Information shall survive termination of this Contract.

#### **XV. Changes**

CITY may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between CITY and CONSULTANT shall be incorporated by written modification to this Contract.

#### **XVI. Conflict of Interest**

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

In addition, to the extent that this Contract (a) must be approved by the CITY's governing body before it may be signed or (b) has a value of \$1,000,000, or more, CONSULTANT shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time CONSULTANT submits this signed Contract to CITY, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The CONSULTANT must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the CONSULTANT must sign the printed copy of the form and complete the "unsworn declaration" which includes, among other things, the date of birth and address of the authorized representative signing the form. The completed Form 1295 with the certification of filing must be filed with the CITY.

The CITY must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the Contract binds all parties to the Contract. The Commission will post the completed Form 1295 to its website within seven business days after receiving notice from the CITY.

Form 1295 Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

<https://www.ethics.state.tx.us/filinginfo/1295/>

For questions regarding and assistance in filling out Form 1295, please contact the Texas Ethics Commission at 512-463-5800.

## **XVII.**

### **Confidential Information**

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning City of McKinney, its affiliates and subsidiaries, and all oral and written information concerning CITY or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT or are required to be disclosed by a governmental authority.

## **XVIII.**

### **Mailing Address**

All notices and communications under this CONTRACT to be mailed to CITY shall be sent to the address of CITY's agent as follows, unless and until CONSULTANT is otherwise notified:

City of MCKINNEY, Texas  
Procurement Services Department  
Post Office Box 517  
McKinney, Texas 75070

Notices and communications to be mailed or delivered to CONSULTANT shall be sent to the address of CONSULTANT as follows, unless and until CITY is otherwise notified:

Freese and Nichols, Inc.  
Attn: Cullen Carlson, PE  
12770 Merit Drive, Suite 900  
Dallas, Texas 75251

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

**XIX.**  
**Applicable Law**

The CONTRACT is entered into subject to the McKinney City Charter and ordinances of CITY, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. CONSULTANT will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with CONSULTANT's income. Situs of this Contract is agreed to be Collin County, Texas, for all purposes, including performance and execution.

**XX.**  
**Severability**

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**XXI.**  
**Remedies**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or

indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

**XXII.**  
**Entire Agreement**

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

**XXIII.**  
**Non-Waiver**

It is further agreed that one (1) or more instances of forbearance by CITY in the exercise of its rights herein shall in no way constitute a waiver thereof.

**XXIV.**  
**Headings**

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

**XXV.**  
**Venue**

The parties to this Contract agree and covenant that this Contract will be enforceable in McKinney, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Collin County, Texas.

**XXVI.**  
**No Third-Party Beneficiary**

For purposes of this Contract, including its intended operation and effect, the parties (CITY and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with CITY or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or CONSULTANT.

**XXVII.**  
**Anti-Boycotting & Anti-Discrimination**

In accordance with Chapter 2271, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

Chapter 2271 does not apply to (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the company is not subject to Chapter 2271 for the reasons stated herein, the signatory executing this contract on behalf of the company verifies by its signature on this Contract that the company does not boycott Israel and will not boycott Israel during the term of this contract.

In accordance with Senate Bill 13, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it:

- (a) does not boycott energy companies; and
- (b) will not boycott energy companies during the term of the contract.

Chapter 2274 does not apply to (1) a company that has fewer than ten (10) full-time employees; and (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the company is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this contract on behalf of the company verifies by its signature on this Contract that the company does not boycott energy companies and will not boycott energy companies during the term of this contract.

In accordance with Senate Bill 19, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it:

- (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
- (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

Chapter 2274 does not apply to (1) a company that has fewer than ten (10) full-time employees; and (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the company is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this contract on behalf of the company verifies by its signature on this Contract that the company does not discriminate against energy companies and will not boycott any firearm entity or firearm trade association and will not discriminate against any firearm entity or firearm trade association during the term of this contract. Notwithstanding the foregoing, such provision does not apply to a governmental entity that:

- (a) contracts with a sole-source provider; or
- (b) does not receive any bids from a company that is able to provide the required written verification.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

***CITY OF MCKINNEY***

By: \_\_\_\_\_  
PAUL G. GRIMES  
City Manager

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

ATTEST:

\_\_\_\_\_  
Name: \_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Name: \_\_\_\_\_  
City Attorney

***Freese and Nichols, Inc.***, a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

**Attachment “A”**

*Scope of Work  
And Fees & Expenses*



## **SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT**

### **PROJECT UNDERSTANDING**

Freese and Nichols, Inc. (FNI) understands that the City of McKinney (City) is seeking assistance with continuing a long-term sewer flow monitoring program that allows the City to identify sources of inflow and infiltration (I/I) in the sewer system, deploy targeted I/I reduction strategies, and quantify the success of various I/I reduction strategies. The City has previously deployed flow meters at 26 sites and rain gauges at three sites. FNI proposes to continue metering at existing sites to enable the City to compare I/I over time in addition to adding flex meters that can be used for more targeted metering in high I/I basins.

### **ARTICLE I**

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

#### **TASK A: Program Management and Coordination**

##### **A1. Project Kickoff Meeting**

FNI will attend one in person kickoff meeting to discuss the project scope, schedule, and goals.

##### **A2. Project Management**

FNI will perform project management duties including preparing and updating project schedule monthly, invoicing, development of monthly progress reports, written summaries of meetings (minutes), and any informal project collaboration. This also includes coordination with ADS Environmental Services Inc. (ADS) who will be responsible for providing all services required in connection with installation, calibration, maintenance and removal of the temporary flow meters and rain gauges for deployment.

##### **A3. Monthly Progress Meetings**

FNI will meet with City staff virtually on a monthly basis. The purpose of these meetings will be to discuss observations from the flow monitoring data and collaborate with the City on any concerns or issues the City may have. The frequency of collaboration may vary based on the needs of the City, but it is anticipated that up to two hours every month will be designated for these activities for the project team.

#### **TASK B: Long-Term Flow Monitoring**

##### **B1. Flow Meter Site Selection**

FNI will coordinate with ADS and City staff to determine installation locations for 30 flow meters and seven rain gauges.

## **B2. Meeting to Discuss Flow Monitoring Locations**

FNI will meet with the City to discuss the proposed temporary flow monitoring sites. FNI will prepare mapping showing the proposed locations and will present to the City. FNI will update the mapping based on City comments before submitting to the flow monitoring subconsultant.

## **B3. Flow Meter Installation, Calibration, And Collection**

FNI's flow monitoring subconsultant will furnish, install, and calibrate 30 velocity/depth type flow meters and seven rainfall gauges at the agreed-upon locations. Flow meters shall remain in place for three years.

ADS will review the data throughout the monitoring period. Field crews will return to the monitoring locations as determined by routine data reviews to perform site maintenance and site confirmations as needed. This includes cleaning depth and velocity sensors in addition to conducting level and velocity confirmations as needed. As an ISO 9001 certified company, ADS personnel adhere to standardized procedures for all field work to maximize the quality and usefulness of the final data. ADS will provide continuous access to the data via the ADS PRISM portal. The data will be accessible from any device with internet connectivity.

ADS will remove all flow meters after the completion of the monitoring period.

## **B4. Host Flow Meter Data within ADS Prism/SLiiCER**

Data reporting shall be web-based through ADS' Prism™ web-hosted software. City personnel will be able to view the spatial location of the sites as well review the raw data being collected 24 hours a day, 7 days a week. Project documents including field and data notes generated for the project will be uploaded and stored on the Prism project website. Prism is a dynamic tool for the management and oversight of collection system operation. SLiiCER will also be available throughout the duration of the study. SLiiCER® is hosted within the Prism software and allows for in-depth analysis of infiltration and inflow (I/I) analytics.

## **B5. Historical Flow Meter Data Incorporated into Prism/SLiiCER**

FNI will coordinate with the flow monitoring subconsultant to incorporate 2 years of historical flow meter data from 2018 and 2024 into the online Prism platform. FNI will process the data with SLiiCER to track historical trends within the flow monitoring sites.

# **TASK C: Flow Meter Analysis**

## **C1. Flow Meter Data Analysis**

FNI will track and monitor the flow meter data for anomalies throughout the flow monitoring period. FNI will update calculations within the ADS SLiiCER software on a monthly basis to track trends. FNI will also develop a one- to two-page summary of flow monitoring trends each month based on analysis from the PRISM and SLiiCER software packages developed by ADS. The summary will be submitted to City staff electronically in PDF format. The summary will include observations and analysis such as:

- I/I rankings by basin

- Significant change in I/I observed per basin
- Recommendations for targeted metering based on recorded I/I
- Summary of observed rainfall events

FNI will develop two maps to illustrate I/I trends each month:

- Normalized I/I Ranking by Basin
- Total I/I Volume Ranking by Basin

#### **TASK D: Long-Term Flow Monitoring Report**

##### **D1. Draft Report**

FNI will prepare a draft report summarizing flow meter site selection, deployment, targeted monitoring, I/I reduction program success, and recommendations for future monitoring initiatives.

##### **D2. Meet to Review Draft Report**

FNI will meet with the City to discuss the draft report. FNI will solicit comments to be incorporated into the final report.

##### **D3. Finalize and Submit Flow Monitoring Report**

FNI will revise the report based on comments from the City and submit four hard copies and one electronic copy in PDF format of the Long-Term Flow Monitoring Report.

#### **ARTICLE II**

**SPECIAL SERVICES:** FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project:

- SS1. Additional Flow Meters or Flow Meter Relocates: To support ongoing I/I mitigation efforts, existing flow meters may be relocated or new flow meters may be added to refine certain basins to better understand how flow is being generated within the collection system. Relocated or new flow meters will be incorporated into the ADS Prism/Slicer portal. FNI will update mapping to show the refined flow meter locations and basins. The effort for this task assumes up to 10 relocated or new flow meter locations per year for the 3-year monitoring period.
- SS2. Wastewater Model and Calibration Update: FNI will conduct one update of the City's wastewater model based on the City's latest GIS and recently completed wastewater infrastructure projects. FNI will recalibrate the wastewater model based on system responses to I/I observed during the flow monitoring period. The model update will not include an update to population projections established in the ongoing 2024 Water and Wastewater Master Plan or development of additional model scenarios.

### ARTICLE III

**ADDITIONAL SERVICES:** Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. N/A

### ARTICLE IV

**TIME OF COMPLETION:** The term of this contract is 3-years from the date of execution. FNI's anticipates that all tasks will be complete by February of 2028.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust the contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Client or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

### ARTICLE V

**COMPENSATION:** The engineering services above are to be performed for a not to exceed fee of \$1,658,135 (\$1,432,383 Basic and \$225,752 Special) broken into the following tasks:

Phase	Task	Description	FNI Hours	Labor	Expense	Sub	Total
A	1	Project Kickoff Meeting	24	\$5,146	\$701	\$0	\$5,847
	2	Project Management	144	\$30,114	\$1,236	\$0	\$31,349
	3	Monthly Project Meetings	288	\$59,117	\$2,460	\$0	\$61,577
B	1	Flow Meter Site Selection	72	\$12,492	\$624	\$0	\$13,115
	2	Meeting to Discuss Flow Meter Locations	28	\$6,478	\$248	\$0	\$6,726
	3	Flow Meter Installation, Calibration, and Collection	68	\$11,598	\$578	\$689,172	\$701,348
	4	Data Hosting in Prism/SLiiCER	0	\$0	\$0	\$388,080	\$388,080
	5	Historical Flow Meter Data Incorporated into Prism/SLiiCER	36	\$6,326	\$306	\$4,048	\$10,680
C	1	Flow Meter Data Analysis	846	\$161,499	\$7,191	\$0	\$168,690
D	1	Draft Report	116	\$25,072	\$986	\$0	\$26,058
	2	Meet to Review Draft Report	12	\$3,149	\$587	\$0	\$3,736
	3	Finalize and Submit Flow Monitoring Report	65	\$14,122	\$1,055	\$0	\$15,177
<b>Basic Total</b>			<b>1,699</b>	<b>\$335,112</b>	<b>\$15,970</b>	<b>\$1,081,300</b>	<b>\$1,432,383</b>
SS	1	Flow Meter Relocates/Additional Flow Meter	218	\$39,758	\$1,922	\$143,220	\$184,900
	2	Wastewater Model Update	186	\$39,271	\$1,581	\$0	\$40,852
<b>Special Services Total</b>			<b>404</b>	<b>\$79,029</b>	<b>\$3,503</b>	<b>\$143,220</b>	<b>\$225,752</b>
<b>Project Total</b>			<b>2,103</b>	<b>\$414,141</b>	<b>\$19,473</b>	<b>\$1,224,520</b>	<b>\$1,658,135</b>

## ARTICLE VI

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

- A. Client recognizes and expects that change orders may be required to be issued during construction. The responsibility for the costs of change orders will be determined on the basis of applicable contractual obligations and professional liability standards. FNI will not be responsible for any change order costs due to unforeseen site conditions, changes made by or due to the Client or Contractor, or any change order costs not caused by the negligent errors or omissions of FNI. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, FNI is liable for change order costs. It is recommended that the Client budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.
- B. Designate in writing a person to act as Client's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define Client's policies and decisions with respect to FNI's services for the Project.
- C. Provide all criteria and full information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Client will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- E. 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. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.
- G. Client shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. Client shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by Client.
- H. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Client may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Client may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Client may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

- I. Give prompt written notice to FNI whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- J. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- K. Bear all costs incident to compliance with the requirements of this Article V.

#### ARTICLE VI

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

Client's Designated Representative –

Client's Accounting Representative –

FNI's Designated Representative – Cullen Carlson, PE  
12770 Merit Drive, Suite 900  
Dallas, TX 75251  
214-217-2259  
cbc@freese.com

FNI's Accounting Representative – Lisa Broussard  
12770 Merit Drive, Suite 900  
Dallas, TX 75251  
972-331-6021  
lisa.broussard@freese.com