

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

**PROFESSIONAL SERVICES CONTRACT
FOR THE
CITY OF MANSFIELD, TEXAS**

This Professional Services Contract, hereinafter referred to as “Contract” is entered into between the **CITY OF MANSFIELD, TEXAS**, a municipal corporation of the State of Texas, hereinafter referred to as "CITY", and **FREESE AND NICHOLS, INC.**, hereinafter referred to as "PROFESSIONAL". CITY and PROFESSIONAL are each a “Party” and are collectively referred to herein as the “Parties”.

**ARTICLE I.
EMPLOYMENT OF PROFESSIONAL**

For and in consideration of the covenants herein contained, PROFESSIONAL hereby agrees to perform professional services in connection with the project as set forth below, and CITY agrees to pay, and PROFESSIONAL agrees to accept fees as set forth in this Contract as full and final compensation for all services performed under this Contract. If PROFESSIONAL is representing that it has special expertise in one or more areas to be utilized in this Contract, then PROFESSIONAL agrees to perform those special expertise services to the appropriate local, regional and national professional standards. PROFESSIONAL shall provide professional services, as further described in Exhibit “A”, within the City of Mansfield, Tarrant County, Texas, and hereinafter referred to as the “Project.”

**ARTICLE II.
PAYMENT FOR SERVICES**

In consideration of the services to be performed by PROFESSIONAL under the terms of this Contract, CITY shall pay PROFESSIONAL for services actually performed, a fee, not to exceed One Hundred Eighty Nine Thousand Four Hundred Dollars and 00/100 (\$189,400.00) as stated in Exhibit “A”, unless other conditions necessitate additional services, which must be authorized in advance in writing by CITY and shall be billed based upon rates agreed upon by the Parties. In the event of a conflict between Exhibit “A” and this Contract, this Contract shall control. 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. CITY will not be required to make any payments to PROFESSIONAL when PROFESSIONAL is in default under this Contract, nor shall this paragraph constitute a waiver of any right, at law or in equity, which CITY may have if PROFESSIONAL is in default, including the right to bring legal action for damages or for specific performance under this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

**ARTICLE III.
CHARACTER AND EXTENT OF SERVICES**

PROFESSIONAL, and its employees or associates, jointly shall perform all the services under this Contract in a manner consistent with the degree of professional skill and care and the orderly progress of the work ordinarily exercised by members of the same profession currently practicing under similar circumstances. PROFESSIONAL represents that all its employees who

perform services under this Contract shall be qualified and competent to perform the services described in Exhibit "A". The scope of services includes the following:

- A. Services as further described in Exhibit "A".
- B. PROFESSIONAL shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by PROFESSIONAL under this Contract, and CITY may look solely to PROFESSIONAL for performance of these services.
- C. It is agreed and understood that this Contract contemplates the full and complete services for the Project including changes necessary to complete the Project as outlined herein. PROFESSIONAL acknowledges by the execution of this Contract that all contingencies known to PROFESSIONAL at the date of this Contract, as may be deemed necessary and proper to complete the assignment, have been included in the fee stated herein. PROFESSIONAL will advise CITY as to the necessity of CITY's providing or obtaining from others special services and data required in connection with the Project (which services and data PROFESSIONAL is not to provide hereunder). Nothing contained herein shall be construed as authorizing additional fees for services to complete the plans, specifications, inspections, tests, easements and permits necessary for the successful completion of the Project.

ARTICLE IV. **TIME FOR COMPLETION**

The term of this Contract shall begin on the last date of execution of this Contract. PROFESSIONAL understands and agrees that time is of the essence. All services, written reports, and other data are to be completed and delivered to CITY as shown on Exhibit "A".

This contract shall terminate when CITY has accepted the plans as being final. No extensions of time shall be granted unless PROFESSIONAL submits a written request, and CITY approves such request in writing.

ARTICLE V. **REVISIONS OF SCHEMATIC DRAWINGS**

CITY reserves the right to direct substantial revision of the deliverables after acceptance by CITY as CITY may deem necessary and CITY shall pay PROFESSIONAL equitable compensation for services rendered for the making of any such revisions. In any event, when PROFESSIONAL is directed to make substantial revisions under this Section of the Contract, PROFESSIONAL shall provide to CITY a written proposal for the entire costs involved in the revisions. Prior to PROFESSIONAL undertaking any substantial revisions as directed by CITY, CITY must authorize in writing the nature and scope of the revisions and accept the method and amount of compensation and the time involved in all phases of the work.

If revisions of the deliverables are required by reason of PROFESSIONAL's error or omission, then such revisions shall be made by PROFESSIONAL without additional compensation to the fees herein specified, and in a time frame as directed by CITY.

It is expressly understood and agreed by PROFESSIONAL that any compensation not specified in Article II may require City Council approval and is subject to funding limitations.

ARTICLE VI.
PROFESSIONAL'S COORDINATION WITH OWNER

PROFESSIONAL shall be available for conferences with CITY so that Project can be designed with the full benefit of CITY's experience and knowledge of existing needs and facilities and be consistent with current policies and construction standards. CITY shall make available to PROFESSIONAL all existing plans, maps, field notes, and other data in its possession relative to the Project. PROFESSIONAL may show justification to CITY for changes in design from CITY standards due to the judgement of said PROFESSIONAL of a cost savings to CITY and/or due to the surrounding topographic conditions. CITY shall make the final decision as to any changes after appropriate request by PROFESSIONAL.

ARTICLE VII.
TERMINATION

This Contract may be terminated at any time by CITY, with or without cause, without penalty or liability except as may otherwise be specified herein upon thirty (30) days written notice. Upon receipt of written notice by CITY, PROFESSIONAL shall immediately discontinue all services and PROFESSIONAL shall immediately terminate placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to cancel promptly all existing contracts insofar as they are related to this Contract. As soon as practicable after receipt of notice of termination, PROFESSIONAL shall submit a statement, showing in detail the services performed but not paid for under this Contract to the date of termination. CITY shall then pay PROFESSIONAL promptly the accrued and unpaid services to the date of termination; to the extent the services are approved by CITY.

This Contract may be terminated by PROFESSIONAL, with mutual consent of CITY, at any time for any cause without penalty or liability except as may otherwise be specified herein upon thirty (30) days written notice. PROFESSIONAL shall submit written notice to terminate Contract and all completed or partially completed studies, reports, drawings, documents, and material prepared under this Contract shall then be delivered to City which it, its agents, or contractors, may use without restraint for the purpose of completing the Project. All rights, duties, liabilities, and obligations accrued prior to such termination shall survive termination. PROFESSIONAL shall be liable for any additional cost to complete the project as a result of PROFESSIONAL's termination of this Contract without cause.

ARTICLE VIII.
OWNERSHIP OF DOCUMENTS

Upon completion of PROFESSIONAL services and receipt of payment in full, the Project drawings, specifications, and other documents or instruments of professional services prepared or assembled by PROFESSIONAL under this Contract shall become the sole property of CITY and shall be delivered to CITY, without restriction on future use. PROFESSIONAL shall retain in its files all original drawings, specifications, documents or instruments of professional services as well as all other pertinent information for the Project. PROFESSIONAL shall have no liability for changes made to the drawings and other documents by other professionals subsequent to the completion of the Contract. CITY shall require that any such change be sealed, dated, and signed by the professional making that change and shall be appropriately marked to reflect what was changed or modified.

ARTICLE IX.
INSURANCE

- A. PROFESSIONAL shall, at its own expense, purchase, maintain and keep in force during the term of this Contract such insurance as set forth below. PROFESSIONAL shall not commence work under this Contract until PROFESSIONAL has obtained all the insurance required under this Contract and such insurance has been approved by CITY, nor shall the PROFESSIONAL allow any subcontractor to commence work on its own subcontract until all similar insurance of the subcontractor has been obtained and approved. All insurance policies provided under this Contract shall be written on an "occurrence" basis. The insurance requirements shall remain in effect throughout the term of this Contract.
1. Worker's Compensation Insurance, as required by law; Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease-each employee, \$500,000 disease-policy limit.
 2. Commercial General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability, covering, but not limited to the indemnification provisions of this Contract, fully insuring PROFESSIONAL'S liability for injury to or death of employees of CITY and third parties, extended to include personal injury liability coverage and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of \$1,000,000 per occurrence.
 3. Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage limit of \$1,000,000 per occurrence; or separate limits of \$500,000 for bodily injury (per person), \$500,000 for bodily injury (per accident), and \$500,000 for property damage. This clause does not apply to personal owned vehicles.
 4. Professional Liability Insurance: PROFESSIONAL shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance. Limits of liability shall be \$1,000,000 per occurrence.
- B. Each insurance policy to be furnished by PROFESSIONAL shall include the following conditions by endorsement to the policy:
1. Name CITY as an additional insured as to all applicable coverage(s) except Worker's Compensation and Employer's Liability Insurance and Professional Liability Insurance;
 2. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to CITY by certified mail to:

Risk Manager
City of Mansfield
1200 E. Broad St.
Mansfield, Texas 76063

If the policy is canceled for nonpayment of premium, only ten (10) days advance written notice to CITY is required;

3. The term "Owner" or "CITY" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of CITY and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of CITY;
4. The policy phrase "other insurance" shall not apply to CITY where CITY is an additional insured on the policy; and
5. All provisions of the Contract concerning liability, duty and standards of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

C. Concerning insurance to be furnished by PROFESSIONAL, it is a condition precedent to acceptability thereof that:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the requirements to be fulfilled by PROFESSIONAL. The CITY's decision thereon shall be final.
2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and

D. PROFESSIONAL agrees to the following:

1. PROFESSIONAL hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against CITY, it being the intention that the insurance policies shall protect all Parties to the Contract and be primary coverage for all losses covered by the policies;
2. Companies issuing the insurance policies and PROFESSIONAL shall have no recourse against CITY for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of PROFESSIONAL;
3. Approval, disapproval, or failure to act by CITY regarding any insurance supplied by PROFESSIONAL (or any subcontractors) shall not relieve PROFESSIONAL of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate PROFESSIONAL from liability;
4. No special payments shall be made for any insurance that PROFESSIONAL and subcontractors, if any, are required to carry; all are included in the Contract price and the Contract unit prices; and

5. Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby. CITY's Risk Manager reserves the right to review the insurance requirements stated in this Contract during the effective period.

ARTICLE X.
MONIES WITHHELD

When CITY has reasonable grounds for believing that:

- A. PROFESSIONAL will be unable to perform this Contract fully and satisfactorily within the time fixed for performance; or
- B. A claim exists or will exist against PROFESSIONAL or CITY arising out of the negligence of the PROFESSIONAL or the PROFESSIONAL's breach of any provision of this Contract; then CITY may withhold payment of any amount otherwise due and payable to PROFESSIONAL under this Contract. Any amount so withheld may be retained by CITY for that period of time as it may deem advisable to protect CITY against any loss and may, after written notice to PROFESSIONAL, be applied in satisfaction of any claim described herein. This provision is intended solely for the benefit of CITY by reason of CITY'S failure or refusal to withhold monies. No interest shall be payable by CITY on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of CITY.

ARTICLE XI.
NO DAMAGES FOR DELAYS

Notwithstanding any other provision of this Contract, PROFESSIONAL shall not be entitled to claim or receive any compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen.

ARTICLE XII.
**PROCUREMENT OF GOODS AND SERVICES FROM MANSFIELD BUSINESSES
AND/OR HISTORICALLY UNDERUTILIZED BUSINESSES**

In performing this Contract, PROFESSIONAL agrees to use diligent efforts to purchase all goods and services from Mansfield businesses whenever such goods and services are comparable in availability, quality and price.

As a matter of policy with respect to CITY projects and procurements, CITY also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers, or other persons in organizations proposed for work on this Contract, the PROFESSIONAL agrees to consider this policy and to use its reasonable and best efforts to select and employ such company and persons for work on this Contract.

ARTICLE XIII.
RIGHT TO INSPECT RECORDS

PROFESSIONAL agrees that CITY shall have access to and the right to examine any directly pertinent books, documents, papers and records of PROFESSIONAL involving transactions relating to this Contract. PROFESSIONAL agrees that CITY shall have access during normal working hours to all necessary PROFESSIONAL's 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 PROFESSIONAL reasonable advance notice of intended audits.

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

ARTICLE XIV.
NO THIRD-PARTY BENEFICIARY

For purposes of this Contract, including its intended operation and effect, the Parties (CITY and PROFESSIONAL) 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 entities may be in a contractual relationship with CITY or PROFESSIONAL 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 PROFESSIONAL.

ARTICLE XV.
SUCCESSORS AND ASSIGNS

CITY and PROFESSIONAL each bind themselves, their successors, executors, administrators and assigns to the other Party of 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 PROFESSIONAL shall assign or transfer its interest herein without the prior written consent of the other.

ARTICLE XVI.
PROFESSIONAL'S LIABILITY

Acceptance of the receivables by CITY shall not constitute nor be deemed a release of the responsibility and liability of PROFESSIONAL, its employees, associates, or agents 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 negligent error, omission or inconsistencies in the designs, working drawings, specifications or

other documents and work prepared by said PROFESSIONAL, its employees, subcontractors, and agents subject to §271.904 of the Texas Local Government Code

**ARTICLE XVII.
INDEMNIFICATION**

To the extent allowed under Texas law (in particular §271.904 of the Texas Local Government Code), PROFESSIONAL agrees to indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought and suffered by any person or persons, to the extent caused by PROFESSIONAL's breach of any of the terms or provisions of this Contract, or by any other negligent act or omission of PROFESSIONAL, its officers, agents, associates, employees or subcontractors, in the performance of this Contract; and in the event of joint and concurrent negligence of both PROFESSIONAL and CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to CITY under Texas law and without waiving any defense of the Parties under Texas law. The provisions of this Paragraph 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.

**ARTICLE XVIII.
SEVERABILITY**

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this Contract are for any reason held to be invalid, void or unenforceable, then these provisions shall be stricken from the Contract and the remainder of the terms, sections, subsections, sentences, clauses, phrases, 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.

**ARTICLE XIX.
INDEPENDENT CONTRACTOR**

PROFESSIONAL covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of CITY; that PROFESSIONAL shall have exclusive control of and the 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 professionals; that the doctrine of respondent superior shall not apply as between CITY and PROFESSIONAL, its officers, agents, employees, contractors, subcontractors and professionals and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and PROFESSIONAL.

**ARTICLE XX.
DISCLOSURE**

By signature of this Contract, PROFESSIONAL acknowledges to CITY that he/she has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed Project and business relationships with abutting property owners. PROFESSIONAL further agrees that

he/she will make disclosure in writing of any conflicts of interest, which develop subsequent to the signing of this Contract and prior to final payment under the Contract.

ARTICLE XXI.
VENUE

The Parties to this Contract agree and covenant that this Contract will be enforceable in Mansfield, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Tarrant County, Texas, or for federal actions in the U.S. District Court Northern District of Texas.

ARTICLE XXII.
ENTIRE CONTRACT

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, including Exhibit "A". In the event of conflicting provisions between this Contract and any attachments or exhibits, this Contract shall be controlling. If there are Amendments and there are any conflicts between the Amendment and a previous version, the terms of the Amendment will prevail.

ARTICLE XXIII.
APPLICABLE LAW

This Contract is entered into subject to the Mansfield 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. Situs of this Contract is agreed to be Tarrant County, Texas, for all purposes, including performance and execution.

ARTICLE XXIV.
DEFAULT

If at any time during the term of this Contract, PROFESSIONAL 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 or equipment to complete the work or fail to perform any of its obligations under this Contract, then CITY shall have the right, if PROFESSIONAL shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract and complete the work in any manner it deems desirable, including engaging the services of other Parties therefor. 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, the cost to CITY of the performance of the balance of the work is in excess of that part of the Contract sum, which has not therefore been paid to PROFESSIONAL hereunder, PROFESSIONAL shall be liable for and shall reimburse CITY for such excess.

ARTICLE XXV.
HEADINGS

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

ARTICLE XXVI.
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.

ARTICLE XXVII.
REMEDIES

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every 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.

ARTICLE XXVIII.
EQUAL EMPLOYMENT OPPORTUNITY

PROFESSIONAL shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, disability, ancestry, national origin or place of birth. PROFESSIONAL shall take action to ensure that applicants are employed and treated without regard to their race, age, color, religion, sex, disability, ancestry, national origin or place of birth. This action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training including apprenticeship. Upon final determination by a court of competent jurisdiction that the PROFESSIONAL has violated this section, this Contract shall be deemed terminated and PROFESSIONAL's further rights hereunder forfeited.

ARTICLE XXIX.
CONSTRUCTION OF CONTRACT

Both Parties have participated fully in the review and revision of this Contract. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply to the interpretation of this Contract.

ARTICLE XXX.
NOTICES

All notices, communications, and reports required or permitted under this contract shall be personally delivered or mailed to the respective Parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either Party is otherwise notified in writing by the other Party, at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

If intended for City, to:

City of Mansfield
Attn.: Alex Whiteway
1200 E. Broad St.
Mansfield, Texas 76063
(817) 728-3615

If intended for Professional, to:

Freese and Nichols, Inc.
Attn: _____
801 Cherry Street, #2800
Fort Worth, Texas 76012
(817) ____ - ____

ARTICLE XXXI.
PRIVATE LAND ENTRY

No entry onto any property of others by PROFESSIONAL on behalf of CITY to survey, or for other reasons related to the performance of services within this Contract shall be made until PROFESSIONAL has secured the landowners' permission to enter and perform such activities, and PROFESSIONAL shall hold CITY harmless from any and all damages arising from activities of PROFESSIONAL on land owned by others.

ARTICLE XXXII.
VERIFICATIONS AND CERTIFICATIONS REQUIRED BY LAW

PROFESSIONAL agrees to execute, simultaneously with this Contract, CITY's Verification and Certifications Required by Law form.

[Signature Page Follows]

EXECUTED this the ____ day of _____, 20 ____, by CITY, signing by and through its City Manager, or designee, duly authorized to execute same and by PROFESSIONAL, acting through its duly authorized officials.

“CITY”
City of Mansfield

By: _____
Jeff Price
Executive Director of Public Works

ATTEST:

Susana Marin, City Secretary

APPROVED AS TO FORM:

Vanessa Ramirez, Assistant City Manager

“PROFESSIONAL”
Freese and Nichols, Inc.

By: _____
Name: _____
Title: _____

CITY OF MANSFIELD

STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____,
20____, by Jeff Price, Executive Director of Public Works of the City of Mansfield.

Notary Public in and for the State of Texas

PROFESSIONAL

STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____,
20____, by _____, _____ of Freese and Nichols, Inc.

Notary Public in and for the State of Texas

SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT**PROJECT UNDERSTANDING**

Freese and Nichols, Inc. (FNI) understands that the City of Mansfield (City) is interested in engineering assistance related to Phase II of the I/I Reduction Strategy Program. This project consists of temporary flow monitoring and micro-metering, I/I reduction quantification in rehabilitated flow meter basins and a report comparing the I/I results before and after rehabilitation.

ARTICLE I

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

TASK A: PROJECT MANAGEMENT**A1. Project Kickoff Meeting**

FNI will conduct a project kickoff meeting with the City and the flow monitoring team to discuss the project scope and schedule. A data request memorandum will be presented and discussed.

A2. Project Management

FNI will perform project management duties including preparing and updating the project schedule, monthly invoicing, development of monthly progress reports, written summaries of meetings (minutes), and any informal project collaboration.

TASK B: FLOW MONITORING, I/I REDUCTION STRATEGIES, AND SSES PRIORITIZATION**B1. Temporary Flow Meter Site Selection**

FNI will review available flow meter site data to recommend and provide strategic temporary flow monitoring locations in basins that have been rehabilitated by City staff in an effort to reduce I/I. FNI will coordinate the site selection and installation of the temporary flow meters with the flow monitoring effort. The City will approve the final flow metering locations.

B2. Meeting with City 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. Temporary Flow Meter Basin Delineation

FNI will finalize temporary flow monitoring plan with the recommended site selection for temporary flow monitoring. FNI will update the delineation of the existing permanent flow meter basins as well as incorporating the delineation of the temporary flow monitoring basins.

B4. Site Investigations

Once the installation sites have been determined, the flow monitoring subconsultant will perform site investigations. The flow monitoring subconsultant will utilize a standard 2-person field crew for fieldwork and comply with Federal standards for confined-space entry. The proposed flow monitoring location will be located, inspected, and verified for hydraulic suitability. The flow monitoring subconsultant will also check for debris in the manhole that could impact data quality and coordinate any required cleaning efforts with the City. Field crews will look for evidence and signs of erratic flow patterns. The flow monitoring subconsultant will also investigate adjacent manholes in order to identify the best monitoring locations.

B5. Temporary Flow Meter Installation, Calibration, Data Collection

FNI's flow monitoring subconsultant will furnish, install, and calibrate six (6) temporary velocity/depth type flow meters and one (1) rainfall gauge at the agreed upon locations. Temporary flow meters shall remain in place for sixty (60) days.

FNI's subconsultant will remove all the temporary flow meters at the completion of the sixty (60) day monitoring period if adequate weather conditions have been observed (dry weather and wet weather conditions that includes at least two (2) storm events of different rainfall intensities). FNI will advise the City if adequate weather conditions have not been observed during the initial sixty (60) day monitoring period to allow the City to consider funding of an extended period for flow monitoring, in advance of removal of the temporary flow meters.

B6. Analyze Flow Meter Data

The flow and rainfall data will be collected at 5-minute intervals for both dry and wet weather flow periods. FNI will utilize the data from six (6) temporary meters in the analysis.

- Analyze flow data for sub-drainage basins and develop average daily dry weather flow diurnal curves and flow peaking factors.
- Develop hydrographs for dry and wet weather flow conditions.
- Determine peak inflow rate for selected rainfall events and determine corresponding rainfall intensity for areas tributary to all flow monitoring locations.
- Determine peak infiltration rates during high groundwater conditions, if possible.

B7. I/I Characterization

Flow data will be compared with rainfall data to determine the amount of inflow and infiltration experienced during selected storm events. Mapping will be developed for all the flow meter basins to characterize the amount of I/I entering the collection system or peaking factors.

B8. Draft I/I Comparative Analysis Technical Memorandum

Prepare Technical Memorandum comparing the flow monitoring results from this project to the flow monitoring conducted as part of Phase I of the I/I Reduction Strategy Program in 2022. FNI to submit one (1) electronic PDF copy to the City. The Memorandum will include flow monitoring results and analysis, development of dry and wet weather flow parameters by flow meter basin, as well as a comparative analysis of the I/I observed at monitoring locations from 2022 to determine if the rehabilitation work conducted by City staff has reduced I/I since the previous flow monitoring period. The report will summarize findings in tabular, graphical, and narrative formats. Design storm curves (Q:I) will be developed to predict peak flow conditions based on an ATLAS 14 5-year, 6-hour design storm with a depth of 3.64 inches.

B9. Meet with City to Discuss Flow Monitoring Results

FNI will prepare for and meet with the City to discuss the results of the temporary flow monitoring and how it compares to the flow monitoring conducted previously in the same basins.

B10. Final I/I Comparative Analysis Technical Memorandum

Finalize Technical Memorandum showing I/I comparative analyses and submit three (3) hard copies and one (1) electronic PDF copy to the City.

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:

S1. Micro-metering Pilot Study

FNI is working with various vendors to conduct micro-metering of the wastewater system to identify problem spots for I/I. A budget of \$100,000 has been included for the implementation and support of this analysis. FNI will work with the City and vendor to develop an acceptable proposal within this budget at a later date.

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: It is anticipated that project will be completed within twelve (12) months from the notice to proceed. Delays during the field work due to inclement weather may delay this schedule.

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

ARTICLE V

FEE SUMMARY: FNI shall perform professional services as outlined in the "Scope of Services". Basic Services will be performed for a lump sum fee of Eighty-Nine Thousand Four Hundred dollars, \$89,400. Special Services will be performed for a not to exceed fee of One Hundred Thousand Dollars, \$100,000.

| Task | Name | Hours | Labor Effort | Expense Effort | Sub Effort | Total Effort |
|-------------------------------|--|------------|-----------------|----------------|------------------|------------------|
| Basic Services | | | | | | |
| A | Project Management | 42 | \$8,811 | \$389 | \$0 | \$9,200 |
| B | Flow Monitoring, I/I Reduction Strategies, and SSES Prioritization | 191 | \$37,439 | \$1,786 | \$40,975 | \$80,200 |
| Basic Services Total | | 233 | \$46,249 | \$2,175 | \$40,975 | \$89,400 |
| Special Services | | | | | | |
| C | Micro-metering Pilot Study | 174 | \$32,477 | \$1,523 | \$66,000 | \$100,000 |
| Special Services Total | | 174 | \$32,477 | \$1,523 | \$66,000 | \$100,000 |
| Grand Total | | 407 | \$78,727 | \$3,698 | \$106,975 | \$189,400 |

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.