



Innovative approaches
Practical results
Outstanding service

4055 International Plaza, Suite 200 • Fort Worth, Texas 76109 • 817-735-7300 • fax 817-735-7491 • www.freese.com

December 10, 2013

Mr. Jim Olk
Director of Community Services
City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, TX 75234

Dear Mr. Olk:

In response to your email on December 9, 2013, we are pleased to submit this proposal for providing professional engineering/planning services to the City of Farmers Branch (Client) for an analysis of the water right associated with the Vitruvian development.

PROJECT UNDERSTANDING

Some residents who have property adjacent to Farmers Branch Creek have reported abnormally low flows that they believe have occurred since the construction of the ponds at the Vitruvian development in the City of Addison. The Vitruvian ponds are authorized in Permit 08-5383, as amended. In an effort to determine, to the extent possible, if the Vitruvian ponds have caused or contributed to these low flows and to determine if Addison is in compliance with the permit, this study will perform a) a review of the adequacy of the existing water right for protection of flows downstream of the ponds and b) review of permit compliance since completion of the Vitruvian project.

SCOPE OF SERVICES

Freese and Nichols (FNI) will render the following professional services in connection with the development of the Project:

1. Obtain and review
 - a. Water right permit application and historical pumping data for the Vitruvian ponds.
 - b. Design data for the water features at the pond, specifically waterfalls and other features that may increase evaporative loss.
 - c. Historical evaporation and flow data from the U.S. Army Corps of Engineers, United States Geological Survey, Texas Water Development Board and others.
 - d. The Trinity Water Availability Model from the Texas Commission on Environmental Quality.
 - e. Other relevant information regarding the historical operation of the Vitruvian ponds.
2. Meet with representatives of the Cities of Farmers Branch and Addison and review current operation of the Vitruvian ponds. Specific information includes the operation of the groundwater well and water features.

3. Develop a spreadsheet for the Vitruvian ponds that calculates evaporative losses from the water surface plus any enhanced evaporation due to water features. (Evaporation replacement is a key feature of the water rights permit). Use the spreadsheet to calculate historical evaporative loss from the ponds since groundwater pumping was initiated. Determine if this operation meets the terms and conditions of the water right permit.
4. Use the same spreadsheet to evaluate potential evaporative loss under current operation using available historical data. Evaluate the adequacy of current operation policies for meeting permit requirements during drought-of-record conditions.
5. Describe the results of the analysis in a draft technical memorandum. Provide to city staff or other stakeholders for comments. Address comments and provide five copies plus a version in electronic format.
6. [Optional Task] Prepare a presentation on the results of the study for presentation to stakeholders.

TIME OF COMPLETION

FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in within 90 days of notice to proceed.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to equitable adjustment of compensation and FNI shall be entitled to adjust contract schedule consistent with the number of days of delay.

RESPONSIBILITIES OF CLIENT

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

- A. Designate in writing a person to act as 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.
- B. Provide all criteria and full information as to Client's requirements for the Project, including objectives and constraints, performance requirements, and any budgetary limitations.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to the Project.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.

- F. 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.

DESIGNATED REPRESENTATIVES

FNI and CLIENT designate the following representatives:

CLIENT's Designated Representative

Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

CLIENT's Accounting Representative

Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

FNI's Project Manager

Jon S. Albright
4055 International Plaza Ste 200
Fort Worth, Tx 76109
Phone: 817-735-7267
Fax: 817-735-7491
E-mail: jsa@freese.com

FNI's Accounting Representative

Sharon James
4055 International Plaza Ste 200
Fort Worth, Tx 76109
Phone: 817-735-7298
Fax: 817-735-7491
E-mail: sdj@freese.com

COMPENSATION

FNI proposes to furnish our services as described herein in accordance with Attachment CO, "Compensation". The total fee for Basic Services shall be computed on the basis of Attachment CO but shall be the lump sum fee of Seven Thousand Three Hundred Dollars (\$7,300). If FNI sees the Scope of Services changing so that additional services are needed, FNI will notify the Designated Representative for the City's approval before proceeding. Additional services shall be computed based on the Schedule of Charges found in Attachment CO.

Payment of the services shall be due and payable upon submission of a statement for services. Statements for services shall not be submitted more frequently than monthly.

TERMS AND CONDITIONS OF AGREEMENT

We propose to furnish our services as described herein in accordance with Attachment TC, "Terms and Conditions of Agreement".

We appreciate this opportunity to submit this proposal. If additional information or clarification is desired, please do not hesitate to contact us. If you are in agreement with the services described above and wish for us to proceed with this assignment, please sign below and return one copy of the agreement for our files.

Yours very truly,

Approved:

FREESE AND NICHOLS, INC.

CITY OF FARMERS BRANCH, TEXAS

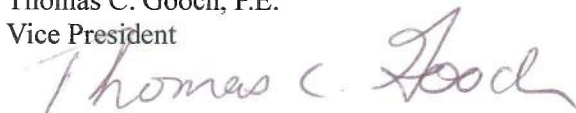
Jon Albright, P.E.
Project Manager

A blue ink signature of Jon Albright, P.E., written over the printed name.

By: _____

Print or Type Name

Thomas C. Gooch, P.E.
Vice President

A blue ink signature of Thomas C. Gooch, P.E., written over the printed name.

Title: _____

Date: _____

COMPENSATION

Lump Sum: Compensation to FNI shall be the lump sum of Seven Thousand Three Hundred Dollars (\$7,300.00). If FNI sees the Scope of Services changing so that additional services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER'S approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

Schedule of Charges:

<u>Position</u>	<u>Min</u>	<u>Max</u>
Professional - 1	73	136
Professional - 2	99	155
Professional - 3	125	198
Professional - 4	136	205
Professional - 5	178	255
Professional - 6	175	447
Construction Manager - 1	86	101
Construction Manager - 2	99	161
Construction Manager - 3	137	153
Construction Manager - 4	172	238
CAD Technician/Designer - 1	61	105
CAD Technician/Designer - 2	97	141
CAD Technician/Designer - 3	112	172
Corporate Project Support - 1	41	110
Corporate Project Support - 2	66	169
Corporate Project Support - 3	76	336
Intern/ Coop	34	67

Rates for In-House Services

Technology Charge

\$8.50 per hour

Travel

Standard IRS Rates

Bulk Printing and Reproduction

Black and White	\$0.10 per copy
Color	\$0.50 per copy
Plot - Bond	\$2.50 per plot
Plot - Color	\$5.75 per plot
Plot - Other	\$5.00 per plot
Binding	\$5.75 per book

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed in-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and rates will be adjusted annually.

375-22013

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** The term Owner as used herein refers to the City of Farmers Branch, Texas. The term FNI as used herein refers to Freese and Nichols, Inc., its employees and agents; also its subcontractors and their employees and agents. As used herein, Services refers to the professional services performed by Freese and Nichols pursuant to the AGREEMENT.
2. **CHANGES:** Owner, without invalidating the AGREEMENT, may order changes within the general scope of the WORK required by the AGREEMENT by altering, adding to and/or deducting from the WORK to be performed. If any change under this clause causes an increase or decrease in FNI's cost of, or the time required for, the performance of any part of the Services under the AGREEMENT, an equitable adjustment will be made by mutual agreement and the AGREEMENT modified in writing accordingly.
3. **TERMINATION:** The obligation to provide services under this AGREEMENT may be terminated by either party upon ten days' written notice. In the event of termination, FNI will be paid for all services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.
4. **CONSEQUENTIAL DAMAGES:** In no event shall FNI or its subcontractors be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, non-operation or increased expense of operation or other equipment or systems.
5. **INFORMATION FURNISHED BY OWNER:** Owner will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications or other information furnished by Owner and Owner agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs and expenses arising therefrom. FNI shall disclose to Owner, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by Owner to FNI that FNI may reasonably discover in its review and inspection thereof.
6. **INSURANCE:** FNI shall provide to Owner certificates of insurance which shall contain the following minimum coverage (All limits in thousands):

Commercial General Liability
General Aggregate \$2,000

Workers' Compensation
Each Accident \$500

Automobile Liability (Any Auto)
CSL \$1,000

Professional Liability
\$3,000 Annual Aggregate

7. **SUBCONTRACTS:** If, for any reason, at any time during the progress of providing Services, Owner determines that any subcontractor for FNI is incompetent or undesirable, Owner will notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the AGREEMENT shall create any contractual relation between any subcontractor and Owner.
8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports data and other project information developed in the execution of the Services provided under this AGREEMENT shall be the property of the Owner upon payment of FNI's fees for services. FNI may retain copies for record purposes. Owner agrees such documents are not intended or represented to be suitable for reuse by Owner or others. Any reuse by Owner or by those who obtained said documents from Owner without written verification or adaptation by FNI will be at Owner's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants, and Owner shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data and other project information in the execution of the Services provided under this AGREEMENT in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to Owner, and FNI shall indemnify and hold harmless Owner from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

9. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this AGREEMENT, FNI does not take possession or control of the subject site, but acts as an invitee in performing the services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.
10. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices.
11. **CONSTRUCTION REPRESENTATION:** If required by the AGREEMENT, FNI will furnish Construction Representation according to the defined scope for these services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the Contract Documents. In performing these services, FNI will endeavor to protect Owner against defects and deficiencies in the work of Contractors; FNI will report any observed deficiencies to Owner, however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or the safety precautions and programs incident to the work of the Contractor. FNI shall not be responsible for the acts or omissions of any person (except his own employees or agent) at the Project site or otherwise performing any of the work of the Project. If Owner designates a person to serve in the capacity of Resident Project Representative who is not a FNI's employee or FNI's agent, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in writing and made a part of this AGREEMENT before the Construction Phase of the Project begins.
12. **PAYMENT:** Progress payments may be requested by FNI based on the amount of services completed. Payment for the services of FNI shall be due and payable upon submission of a statement for services to OWNER and in acceptance of the services as satisfactory by the OWNER. Statements for services shall not be submitted more frequently than monthly. Any applicable new taxes imposed upon services, expenses, and charges by any governmental body after the execution of this AGREEMENT will be added to FNI's compensation.
- If OWNER fails to make any payment due FNI for services and expenses within thirty (30) days after receipt of FNI's statement for services therefore, the amounts due FNI will be increased at the rate of one percent (1%) per month from said thirtieth (30th) day, and, in addition, FNI may, after giving seven (7) days' written notice to OWNER, suspend services under this AGREEMENT until FNI has been paid in full, all amounts due for services, expenses and charges.
13. **ARBITRATION:** No arbitration arising out of, or relating to, this AGREEMENT involving one party to this AGREEMENT may include the other party to this AGREEMENT without their approval.
14. **SUCCESSORS AND ASSIGNMENTS:** OWNER and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and FNI are hereby bound to the other party to this AGREEMENT and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this AGREEMENT.
- Neither OWNER nor FNI shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of services hereunder.
15. **PURCHASE ORDERS:** If a Purchase Order is used to authorize FNI's Services, only the terms, conditions/instructions typed on the face of the Purchase Order shall apply to this AGREEMENT. Should there be any conflict between the Purchase Order and the terms of this AGREEMENT, then this AGREEMENT shall prevail and shall be determinative of the conflict.