

PROFESSIONAL SERVICES AGREEMENT

Stormwater Utility Fee Rate Study

This Professional Services Agreement ("Agreement") is made by and between the **City of Farmers Branch, Texas** ("City"), and **Freese and Nichols, Inc.** ("Professional") (each a "party" and collectively the "parties"), acting by and through their respective authorized representatives.

RECITALS

WHEREAS, the City desires to engage the Professional to perform certain work and services, hereinafter referred to only as "services", as further specified in the Scope of Services defined in Section 2 of this Agreement; and

WHEREAS, the Professional has expressed a willingness to perform said services in conformance with this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Contract Documents

This Agreement is part of the "Contract Documents," which include (1) this Agreement and (2) the Scope of Services as provided herein, Exhibit A. In the event there is a conflict between any term, provision, and/or interpretation of the Contract Documents, the documents shall take precedent and control in the order listed in this Section. If discrepancies are found that may impact the Professional's performance of the services for the Project, it shall be the Professional's obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the Project. Should the Professional fail or refuse to seek clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the Project, the Professional shall be solely responsible for the costs and expenses.

Section 2. Scope of Services

Upon written notice to proceed by the City, the Professional agrees to **The Stormwater Utility Fee Rate Study** ("Project"), as set forth in the Scope of Services attached as Exhibit A hereto (the "Scope of Services"). The Professional shall not be entitled to any claim for extra services, additional services or changes in the services without a written agreement with the City prior to the performance of such services.

Section 3. Term of Agreement

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and shall continue until the Professional completes the services required herein and the City has accepted the same, unless sooner terminated as provided in this Agreement.

Section 4. Professional's Obligations

- (a) Performance of Services. The Professional shall furnish and pay for all labor, tools, software, materials, equipment, supplies, transportation, and management necessary to perform the services. To the extent reasonably necessary, Professional may engage the services of any agents, assistants, or other persons that Professional may deem proper to assist in the performance of the services under this Agreement; provided, that Professional shall be responsible for all costs related thereto, except as expressly authorized in writing in advance by the City.
- (b) Site Access. The City will endeavor to provide such rights of access on any project site as may be reasonably necessary for the Professional to perform any necessary studies, surveys, tests, or other required investigations in relation to the services; provided, that the City shall have no obligation to (i) provide off-site access, (ii) provide access to private property for which the City does not have an existing right to access, nor (ii) incur any costs associated with the access to be provided under this Agreement.
- (c) Standard of Care. Professional shall perform the services with the skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional licenses. The Professional shall be responsible for the professional quality, technical accuracy, and coordination of all services, including all Project Documents, designs, drawings, specifications, plans, reports, presentations, and all other services furnished by the Professional under this Agreement. The professional shall, without additional compensation, correct or revise any service errors or deficiencies. The Professional shall further make, without expense to the City, such revisions to the Project Documents as may be required to meet the needs of the City and which are within the Professional's Scope of Services.
- (d) Additional Services. Should the City require additional services not included under this Agreement, the Professional shall make reasonable efforts to provide such additional services in accordance with the fee schedule (Exhibit A) and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.
- (e) No Waiver of City's Rights. Neither the City's review, approval, acceptance of, nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Professional shall be and remain liable to the City in accordance with applicable law for all damages to the City caused by Professional's negligent performance of any of the services furnished under this Agreement.
- (f) Independent Contractor. It is understood and agreed by and between the parties that the Professional, while performing under this Agreement, is acting independently and that the City assumes no responsibility or liabilities to any third party in connection with the Professional's actions. All services to be performed by the Professional pursuant to this Agreement shall be in the capacity of an independent contractor and not as an agent or employee of the City. The Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. There is no intended third-party beneficiary to this Agreement.

(g) Inspection of Records. Professional grants the City and its designees the right to audit, examine or inspect, at the City's election, all of Professional's Records (defined below) relating to the performance of services under this Agreement, during the term of the Agreement and any retention period herein. The City's audit, examination, or inspection of the Professional's Records may be performed by a City designee, which may include its internal auditors or an outside representative engaged by the City. The Professional agrees to retain the Professional's Records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. "Professional's Records" shall include any and all information, materials and data of every kind and character generated in connection with the services under this Agreement. The City agrees that it will exercise its right to audit, examine, or inspect the Professional's Records during regular business hours unless the City has provided advance written notice of an alternate time. Professional agrees to allow the City and its designees access to all of Professional's Records, Professional's facilities, and the current or former employees of the Professional, to the extent deemed reasonably necessary by the City or its designee(s), to perform such audit, inspection, or examination.

(h) Certification of No Conflicts. The Professional hereby warrants to the City that the Professional has made full disclosure in writing of any existing or potential conflicts of interest related to the Professional's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, the Professional hereby agrees immediately to make full disclosure to the City in writing.

(i) Hazardous Materials. The Professional shall report the presence and location of any hazardous materials it notices or which a professional of similar skill and experience should have noticed to the City.

Section 5. Performance Schedule

(a) Time for Performance. The Professional shall perform all services as provided for under this Agreement in a proper, efficient, timely, and professional manner in accordance with the City's requirements. In the event Professional's performance of this Agreement is delayed or interfered with by acts of the City or others, the Professional may request an extension of time in conformance with this Section 5 for the performance of same as hereinafter provided but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.

(b) Extensions; Written Request Required. No allowance of any extension of time, for any cause whatever (including an event of Force Majeure as defined herein below), shall be claimed or made to the Professional, unless the Professional shall have made a written request upon the City for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless City and Professional have agreed in writing upon the allowance of additional time to be made.

Section 6. Documents

(a) Project Documents. All proposals, reports, studies, surveys, applications, drawings, plans, specifications, data, and other documents, whether in draft form or final form (including any electronic format) prepared by the Professional and its employees, consultants, subcontractors,

agents, or representatives (collectively referred to in this section as “Professional”) for the use and/or benefit of City in connection with this Agreement (“Project Documents”). The Professional shall be deemed the authors of their respective component of the Project Documents. Notwithstanding, upon payment by the City as required by this Agreement, the City shall own, have, keep and retain all rights, title, and interest in and to all Project Documents, including all ownership, common law, statutory, and other reserved rights, including copyrights (except copyrights held by the Professional) in and to all Project Documents, whether in draft form or final form, which are produced at City’s request and in furtherance of this Agreement. The City shall have full authority to authorize any contractor(s), subcontractors, consultants, and material or equipment suppliers to reproduce applicable portions of the Project Documents to and for use in their execution of the services or for any other purpose. Acceptance and approval of the Project Documents by the City shall not constitute nor be deemed a release of the responsibility and liability of the Professional for the accuracy or competency of its designs, working drawings, specifications, or other documents; nor shall such approval be deemed to be an assumption of such responsibility by the City for any defect in the designs, working drawings, and specifications, or any other documents prepared by Professional.

(b) Professional’s Documents. All previously owned intellectual property of the Professional, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by the Professional or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Professional to provide the services or protect deliverables to the City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto (“Professional’s Documents”), shall remain the sole and exclusive property of Professional. Notwithstanding, the Professional agrees that the City shall have the right to access to all such information and is granted the right to make and retain copies of Professional’s Documents. The City acknowledges that any reuse of Professional’s Documents without specific written verification or adaptation the by Professional will be at the City’s sole risk and without liability or legal exposure to the Professional.

(c) Confidential Information. The Professional agrees it will notify the City in writing if it considers specific information to be confidential or proprietary trade secrets and will use its best efforts to clearly mark all such information as “Confidential” and/or “Proprietary – Trade Secret” at the time it is delivered or made accessible to City. The City acknowledges that all such designated information is considered by the Professional to be confidential and the exclusive property of the Professional. Notwithstanding the foregoing, Professional acknowledges that this Agreement and all services performed hereunder are subject to the legal requirements of the Texas Public Information Act and that City will have no obligation to protect or otherwise limit disclosure of any confidential or proprietary information if Professional has not notified City of such designation in conformance with this section. Professional agrees and covenants to protect any and all proprietary rights of City (or other persons) in any materials provided to Professional by City. Additionally, any materials provided to the Professional by the City shall not be released to any third party without the consent of the City and shall be returned intact to the City upon termination or completion of this Agreement if instructed to do so by the City. In the event City delivers to Professional any information that has been expressly marked “Confidential” or has notified Professional is confidential or is the proprietary information of a third party, Professional agrees it shall not disclose to anyone directly or indirectly during the term of this Agreement or at any time thereafter, any such information, nor shall it use any such information for any purpose other than as reasonably necessary

in connection with Professional's performance of the services under this Agreement. Professional shall further, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction against City, insofar as the same is based on any claim that materials or services provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights. Notwithstanding, the foregoing confidentiality obligations shall not extend to, and nothing herein shall limit either party's right to disclose any information provided hereunder which: (i) was or becomes generally available to the public, other than as a result of a disclosure by the receiving party or its personnel; (ii) was or becomes available to the receiving party or its representatives on a non-confidential basis, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary duty; (iii) was independently developed by the receiving party without the use of any confidential information of the disclosing party; or (iv) is required to be disclosed by applicable law or court order.

Section 7. Payment

(a) Compensation. Professional's compensation shall be as specified in the payment schedule in Exhibit A; provided, that the total compensation under this Agreement shall not exceed **\$55,950.00**.

(b) Payment Terms. The City agrees to pay the Professional for all services authorized in writing and properly performed by Professional in general conformance with the fee schedule, subject to changes in the Scope of Services or additional services agreed upon in writing. Unless otherwise agreed in writing, all payments to Professional by City shall be based on detailed monthly invoices submitted by Professional for work performed and accepted by City, less any previous payments. Payment will be due within thirty (30) days of the City's receipt and acceptance of an approved invoice. Notwithstanding the foregoing, the City reserves the right to delay, without penalty, any payment to the Professional when, in the opinion of the City, the Professional has not made satisfactory progress on the Project as described in the Scope of Services.

(c) Deductions. The City may deduct from any amounts due or to become due to the Professional any sum or sums owing by the Professional to the City. In the event of any breach by Professional of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against the City, or the City's premises, arising out of Professional's performance of this Agreement, the City shall have the right to retain out of any payments due or to become due to Professional an amount sufficient to completely protect City from any and all reasonably anticipated loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by Professional.

Section 8. Default; Force Majeure

(a) Default; Notice to Cure. A party shall be deemed in default under this Agreement if the party is in breach of a material provision of this Agreement and said breach is not cured within fifteen (15) days written notice of default by the other party. In the event the breaching party has notified the other party in writing that it is diligently working to cure the breach and has provided reasonable written evidence in support of the same, the breaching party shall not be deemed in default until the thirtieth (30th) day following the non-breaching party's notice of default.

(b) Default by Professional. In addition to default under Section 8(a) above, the Professional shall be in default under this Agreement if the Professional fails to comply or becomes disabled and unable to comply with the provisions of this Agreement related to the Professional's performance of the services, including the quality or character of the services or time of performance for any material component of the services. If such default is not corrected within ten (10) days from the date of the City's written notice to the Professional regarding the same, City may, at its sole discretion without prejudice to any other right or remedy:

(i) Terminate this Agreement and be relieved of the payment of any further consideration to Professional except for all services determined by City to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of Professional to and from meetings called by City at which Professional is required to attend, but shall not include any loss of profit of Professional. In the event of such termination, City may proceed to complete the services in any manner deemed proper by City, either by the use of its own forces or by resubletting to others; or

(ii) The City may, without terminating this Agreement or taking over the services, furnish the necessary labor, materials, equipment, supplies and/or assistance necessary to remedy the situation, at the expense of the Professional.

(c) Force Majeure. To the extent either party of this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, or a government restriction, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, or other specific cause reasonably beyond the party's control and not attributable to its malfeasance, neglect or nonfeasance (each an event of "Force Majeure"), the time for performance of such obligation (other than a payment obligation) may be extended for a period equal to the time lost by reason such event, provided, that the party complies with the provisions of this section. Specifically, the party asserting Force Majeure (i) shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention, and (ii) has the burden of demonstrating: (1) how and why their performance was so prevented, (2) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (3) that the party used commercially reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.

Section 9. Termination; Suspension

(a) Termination Upon Default. Either party may terminate this Agreement upon written notice if the other party is in default of this Agreement, subject to the defaulting party's right to cure in conformance with the terms of this Agreement.

(b) Termination by City. The City shall be entitled to terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to Professional.

(c) Termination Following Request for Modification. Should the City require a modification of this Agreement with Professional, and in the event the City and Professional fail to agree upon a modification to this Agreement, the City shall have the option of terminating this Agreement and

Professional's services hereunder at no additional cost other than the payment to the Professional, in accordance with the terms of this Agreement, for the services reasonably determined by City to be properly performed by Professional prior to such termination date.

(d) Suspension. The City reserves the right to suspend this Agreement for the convenience of the City by issuing a written notice of suspension that describes the City's reason(s) for the suspension and the expected duration of the suspension. Such expected duration shall, in no way, guarantee what the total number of days of suspension shall occur. Such suspension shall take effect immediately upon the Professional's receipt of said notice. Should such suspension extend past the expected duration identified by City in its latest notice of suspension, Professional shall have the right to terminate this Agreement if (i) Professional provides not less than thirty (30) days prior written notice to City requesting to recommence the services, and (ii) City does not recommence the services within the time requested.

Section 10. Insurance

The Professional shall during the term hereof maintain in full force and effect all policies of insurance reasonably required by the City. The Professional's obligation to provide acceptable certificates of insurance is a material condition precedent to this Agreement, and services under this Agreement shall not commence until certificates of insurance have been received, reviewed, and accepted by the City. The minimum coverages and limits of liability for the policies of insurance required for the specific services under this Agreement are maintained by and accessible through the City's purchasing department.

Section 11. Indemnification; Notice.

THE CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY INDEMNITEES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY INDEMNITEES. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, CONTRACTORS, SERVANTS, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS, OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS, OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE NEGLIGENCE OR WILFUL MISCONDUCT OF A CITY INDEMNITEE, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY THE CITY INDEMNITEES TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL, ITS OFFICERS, AGENTS, OR EMPLOYEES AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION).

Notices of Claim. The Professional shall promptly advise the City in writing of any claim or demand against the City, related to or arising out of the Professional's acts or omissions under this Agreement and shall see to the investigation of such claims or demand at the Professional's sole cost and expense; provided, that City, at its option and at its own expense, may participate in such investigation without relieving the Professional of any of its obligations hereunder. Professional's obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained under this Agreement.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR A PERIOD OF FOUR (4) YEARS.

Section 12. Notice.

All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth on the signature page(s) of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All notices shall be delivered by (a) personal delivery, (b) certified or registered mail (in each case, return receipt requested, postage prepaid), (c) nationally recognized overnight courier (with all fees pre-paid), or (d) email of a pdf document containing the required notice. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (i) when received if delivered or given in person, (ii) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (iii) on the next business day after the day the notice or document is provided to a nationally recognized carrier to be delivered as set forth above, or (iv) if sent by email, the next business day. A confirmation of delivery report that reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient.

Section 13. Verifications by Professional

The Professional's execution of this Agreement shall serve as its formal acknowledgment and written verification that:

- (a) if the requirements of Subchapter J, Chapter 552, Government Code, apply to this Agreement and Professional agrees that the Agreement can be terminated if Professional knowingly or intentionally fails to comply with a requirement of that subchapter;
- (b) pursuant to Texas Government Code Chapter 2270, that Professional's organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement; and
- (c) pursuant to Texas Government Code Chapter 2251, that Professional's organization does not currently discriminate against firearm and ammunition industries and will not for the term of the contract. Discriminating means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations, specifically with the firearm or ammunition industry or with a person or entity doing business in the firearm or ammunition industry, but does not include an action made for ordinary business purposes.

Section 14. Miscellaneous

(a) The Professional shall not assign or sublet this Agreement, in whole or in part, without the prior written consent of the City. (b) The Professional shall comply with all federal, state, county, and municipal laws, ordinances, resolutions, regulations, rules, and orders applicable to the services under this Agreement. (c) The laws of the State of Texas shall govern this Agreement; and the venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said courts. (d) This Agreement contains the entire understanding of the parties with respect to the subject matter hereof, and there are no oral understandings, statements, or stipulations bearing upon the meaning or effect of this Agreement that have not been incorporated herein. (e) The exhibits attached hereto, if any, are incorporated herein and made a part hereof for all purposes. (f) Unless expressly provided otherwise herein, this Agreement may only be modified, amended, supplemented, or waived by a mutual written agreement of the parties. (g) In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it. (h) Any of the representations and obligations of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the termination of this Agreement shall survive termination. (i) This Agreement may be executed by the parties in separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof, each signed by less than all but together signed by all of the parties. (j) Each party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement. (k) Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK - SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

For City:

CITY OF FARMERS BRANCH, TEXAS

By: _____
Benjamin Williamson
City Manager

Date: _____

Notice Address:

City of Farmers Branch
Attn: City Manager
1300 William Dodson Pkwy
Farmers Branch, Texas 75234
E: Benjamin.williamson@farmersbranchtx.gov

For Professional:

FREESE AND NICHOLS, INC.

By: _____

Name: _____

Title: _____

Date: _____

Notice Address:

Freese and Nichols, Inc.
Attn: _____
PO Box 980004
Fort Worth, TX 76198-0004
E: _____

Approved as to Form:

Whitt L. Wyatt, City Attorney
[vf 05.15.2025]

EXHIBIT “A”
SCOPE OF WORK

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

COUNTY OF TARRANT §

This Agreement is entered into by City of Farmers Branch, TX (Client) and Freese and Nichols, Inc. (FNI). In consideration of FNI providing professional services for Client and Client utilizing these services, the parties hereby agree:

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement, Client agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as Farmers Branch Stormwater Utility Fee.
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with the Project as set forth in Attachment SC – Scope of Services and Responsibilities of Client which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Client agrees to pay FNI for all professional services rendered under this Agreement. FNI shall perform professional services under this Agreement for Basic Services at a lump sum fee of \$53,950.00 and Special Services at a not to exceed fee of \$2,000.00. Total fee for this Agreement is \$55,950.00
- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement, as set forth in Attachment TC – Terms and Conditions of Agreement, shall govern the relationship between the Client and FNI.
- V. **GOVERNING LAW; VENUE:** This Agreement shall be administered and interpreted under the laws of the State of Texas. Venue of any legal proceeding involving this Agreement shall be in Tarrant County, Texas.
- VI. **EFFECTIVE DATE:** The effective date of this Agreement is _____, 2025.

Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the Client and FNI. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and FNI and not for the benefit of any other party. This Agreement constitutes the entire agreement between the Client and FNI and supersedes all prior written or oral understandings.

This Agreement is executed in two counterparts. IN TESTIMONY HEREOF, Agreement executed:

CITY OF FARMERS BRANCH, TX

FREESE AND NICHOLS, INC.

By: _____

By: _____

Name: _____

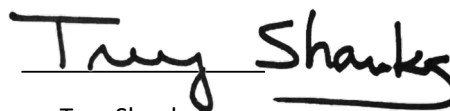
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



Trey Shanks

Vice President

April 15, 2025

**CITY OF FARMERS BRANCH
SCOPE OF SERVICES
STORMWATER UTILITY FEE REVIEW
April 15,2025**

PROJECT UNDERSTANDING

The City of Farmers Branch (City) established a stormwater utility fee to fund the costs necessary for drainage maintenance and improvements throughout the City. Freese and Nichols (FNI) understands that City staff has determined the need to evaluate an increase to the stormwater fee and update and reconcile utility billing. The City has requested FNI to conduct a cost of service evaluation and to identify potential fee increases and alterations to the rate structure.

SCOPE OF BASIC SERVICES

A1. Cost of Service Evaluation

FNI will coordinate with the City, who will provide existing stormwater costs and future needed costs. Cost considerations may include O&M and CIP.

A2. Rate Structure Evaluation

FNI will input information from Task A1 into FNI's Stormwater Utility Rate Model to identify revenue requirements and projected rates. Variations to the residential tier structure will not be evaluated through the rate model.

FNI will analyze the rate structure applied to non-residential properties. The analysis will include a water quality evaluation to non-residential properties as well as an evaluation of a percentage of imperviousness factor applied to non-residential properties.

A3. Comparison of Storm Water Utility Fees for Other Cities

FNI will coordinate with the City to select up to six comparison cities for FNI to study to inform the stormwater utility fee analysis.

FNI will conduct research into the rates and fee structures of the comparison cities selected by the City. FNI will develop summary information to show the City's considered rate and structure options relative to the selected comparison cities. Examples will be provided for typical residential, small business, and large business properties. This option can be used to inform the fee structure basis.

FNI will conduct research into publicly available stormwater revenues and budget allocations for the comparison cities selected by the City. FNI will develop summary information to show the City's considered revenues and budget allocations for the stormwater services relative to the selected comparison cities. This option can be used to inform the cost of service evaluation and the revenue assessment.

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:

A4. Municipal Drainage Advisory Committee Meeting Support

FNI will provide up to \$2,000 of support to the City as needed to prepare for Municipal Drainage Advisory Committee meetings to present the findings of the Stormwater Utility Fee Review.

TIME OF COMPLETION

FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services within 3 months.

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

RESPONSIBILITIES OF THE CITY

The City 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 the City's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to the City's requirements for the Project.
- 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 the City 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 The City may require or FNI may reasonably request with regard to legal issues pertaining to the Project.

DESIGNATED REPRESENTATIVES

FNI and the City designate the following representatives:

FNI's Primary Contact

Name: Connor Turan
Address: 801 Cherry St. Suite 2800
Fort Worth, TX 76102
Phone: 682-382-2785
Email: connor.turan@freese.com

FNI's Accounting Contact

Name: Raquel Longoria
Address: 801 Cherry St. Suite 2800
Fort Worth, TX 76102
Phone: 817-735-7256
Email: raquel.longoria@freese.com

COMPENSATION

ATTACHMENT CO

Compensation to FNI for Basic Services in Attachment SC shall be the lump sum of Fifty-Three Thousand Nine Hundred Fifty Dollars (\$53,950) for Basic Services.

Compensation to FNI for Special Services in Attachment SC shall be computed on the basis of the following Schedule of Charges, but shall not exceed Two Thousand Dollars (\$2,000).

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 following Schedule of Charges.

<u>Position</u>	<u>Hourly Rate</u>
Professional 1	132
Professional 2	162
Professional 3	180
Professional 4	208
Professional 5	243
Professional 6	278
Construction Manager 1	114
Construction Manager 2	141
Construction Manager 3	154
Construction Manager 4	193
Construction Manager 5	232
Construction Manager 6	265
Construction Representative 1	102
Construction Representative 2	114
Construction Representative 3	141
Construction Representative 4	154
CAD Technician/Designer 1	112
CAD Technician/Designer 2	144
CAD Technician/Designer 3	179
Corporate Project Support 1	107
Corporate Project Support 2	129
Corporate Project Support 3	172
Intern / Coop	72

Rates for In-House Services and Equipment

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

OTHER DIRECT EXPENSES:

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

These ranges and/or rates will be adjusted annually in February. Last updated 2025.

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** As used herein: (1) City refers to the party named as such in the Agreement between the City and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents; and (3) Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **INFORMATION FURNISHED BY CITY:** City will assist FNI by placing at FNI's disposal all available information pertinent to the project, including previous reports and any other data relative to design or construction of the project. 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 City. To the fullest extent permitted by law, City 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 City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications, or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.
3. **STANDARD OF CARE:** FNI will perform all professional services under this Agreement with the professional skill and care ordinarily provided by competent members of the subject profession practicing under the same or similar circumstances and professional license as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of the subject profession. FNI makes no warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by FNI.
4. **INSURANCE:** FNI shall provide City with certificates of insurance with the following minimum coverage:

<u>Commercial General Liability</u>	<u>Workers' Compensation</u>
\$2,000,000 General Aggregate	As required by Statute
<u>Automobile Liability (Any Auto)</u>	<u>Professional Liability</u>
\$1,000,000 Combined Single Limit	\$3,000,000 Annual Aggregate
5. **CHANGES:** City, without invalidating the Agreement, may order changes within the general scope of Services required by the Agreement by altering, adding, and/or deducting from the Services to be performed. If any such change under this clause causes an increase or decrease in FNI's cost or time required for the performance of any part of the Services, an equitable adjustment will be made by mutual agreement and the Agreement will be modified in writing accordingly.

FNI will make changes to the drawings, specifications, reports, documents, or other deliverables as requested by City. However, when such changes differ from prior comments, directions, instructions, or approvals given by City or are due to causes not solely within the control of FNI, FNI shall be entitled to additional compensation and time required for performance of such changes to the Services authorized under this Agreement.
6. **OPINION OF PROBABLE CONSTRUCTION COSTS:** No fixed limit of project construction cost shall be established as a condition of the Agreement, unless agreed upon in writing and signed by the parties hereto. If a fixed limit is established, FNI shall be permitted to include contingencies for design, bidding, and price escalation in the construction contract documents to make reasonable adjustments in the scope of the project to adjust the project construction cost to the fixed limit. Such contingencies may include bid allowances, alternate bids, or other methods that allow FNI to

determine what materials, equipment, component systems, and types of construction are to be included in the construction contract documents. Fixed limits, if any, shall be increased by the same amount as any increase in the contract price after execution of the construction contract.

FNI will furnish an opinion of probable construction or program cost based on present day pricing, 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 prices. Accordingly, FNI cannot and does not warrant or represent that bids or cost proposals will not vary from the City's project budget or from any estimate or opinion of probable construction or program cost prepared by or agreed to by FNI.

7. **PAYMENT:** Progress payments may be requested by FNI based on the amount of Services completed. Payment for Services shall be due and payable upon submission of a statement for Services to City and in acceptance of Services as satisfactory by City. Statements for Services shall not be submitted more frequently than monthly. Any applicable taxes imposed upon the Services, expenses, and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.

If City fails to make any payment due FNI for Services, expenses, and charges within 30 days after receipt of FNI's statement for Services therefore, the amounts due FNI will be increased at the rate of 1 percent per month from said 30th day, and, in addition, FNI may, after giving 7 days' written notice to City, suspend Services under this Agreement until FNI has been paid in full for all amounts due for Services, expenses, and charges.

If FNI's Services are delayed or suspended by City or are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports, data, and other project information developed in the execution of Services provided under this Agreement shall be the property of City upon payment of FNI's fees for Services. FNI may retain copies for record purposes. City agrees such documents are not intended or represented to be suitable for reuse by City or others. Any reuse by City or by those who obtained said documents from City without written verification or adaptation by FNI, will be at the City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. To the fullest extent permitted by law, City 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 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 City, and FNI shall indemnify and hold harmless City from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting therefrom.

9. **TERMINATION:** The obligation to provide Services under this Agreement may be terminated by either party upon 10 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.
10. **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 construction contract documents. In performing these Services, FNI will report any observed deficiencies to City, 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 contractor's means, methods, techniques, sequences, or procedures of construction 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 its own employees or agents) at the project site or otherwise performing any of the work of the project. If City designates a resident project representative that is not an employee or agent of FNI, the duties, responsibilities, and limitations of authority of such resident project representative will be set forth in writing and made a part of this Agreement before the construction phase of the project begins.
11. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** City agrees to include provisions in the general conditions of the construction contract that name FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by the contractor for the project (except workers' compensation and professional liability policies); and (2) as an indemnified party in any indemnification provisions where City is named as an indemnified party.
12. **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 project 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 Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing 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.
13. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City shall 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 City.
14. **PURCHASE ORDERS:** If a purchase order is used to authorize FNI's Services, only the terms, conditions, and 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 be determinative of the conflict.

15. **CONSEQUENTIAL DAMAGES:** In no event shall FNI 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 equipment or systems, loss of anticipated profits or revenue, non-operation or increased expense of operation), arising out of, resulting from, or in any way related to this Agreement or the project.
16. **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.
17. **SUCCESSORS AND ASSIGNMENTS:** City and FNI and the partners, successors, executors, administrators, and legal representatives of each 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 City 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.