



- 2.04 Reimbursable expenses shall be reimbursed to Contractor at-cost upon submission of properly submitted expense records to District. Service charges are not applicable and not subject to reimbursement.

### SECTION III TERMINATION

- 3.01 District may terminate this Agreement at any time by providing ten (10) days written notice to Contractor.
- 3.02 Upon receipt of such notice, Contractor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 3.03 Within thirty (30) days after receipt of notice of termination, Contractor shall submit a statement, showing in detail the services performed under this Agreement to the date of termination.
- 3.04 District shall then pay Contractor that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of charges as have been previously made.
- 3.05 Copies of all completed or partially completed designs, drawings, electronic data files and specifications prepared under this Agreement shall be delivered to District when and if this Agreement is terminated in the manner and for the purposes provided in this Agreement.

### SECTION IV INSURANCE

- 4.01 During the period of this Agreement, Contractor shall maintain, at its expense, insurance with limits no less than those prescribed below with a carrier having a rating with A.M. Best & Co of A-VII or better:
- A. General Liability (including Contractual Liability):
    - Bodily Injury and Property Damage \$1,000,000.00
    - Aggregate \$2,000,000.00
  - B. Automobile Liability:
    - Bodily Injury and Property Damage \$1,000,000.00
    - Limit per Occurrence
  - C. Worker's Compensations Statutory \$1,000,000.00
    - Limit Employer's Liability
  - D. Professional Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.
- 4.02 With respect to the required insurances listed in Section 4.01, Contractor shall:
- A. Provide County with a thirty (30) day advance written notice of cancellation or material change to said insurance; and,

- B. Provide County with Certificates of Insurance evidencing required coverages upon acceptance of this Agreement by Commissioners Court.
- 4.03 The policies specified in Section 4.01 shall name Fort Bend County as an additional insured. Furthermore, the Workers' Compensation and Liability Insurance carriers shall grant a waiver of subrogation in Fort Bend County's favor.
- 4.04 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Agreement is completed.
- 4.04 Contractor shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- 4.05 Approval of the insurance by County shall not relieve or decrease the liability of the Contractor.

SECTION V  
NOTICE

- 5.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to District or Contractor at the addresses set forth below.
- 5.02 If mailed, any notice or communication shall be deemed to be received three days after the date of deposit in the United States Mail.
- 5.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to Contractor:  
Project Manager:

Freese & Nichols, Inc.  
Cody Cockroft  
3100 Wilcrest Drive  
Suite 200  
Houston, Texas 77042

B. If to District notice must be sent to both District's Purchasing Agent and District Project Manager:

Fort Bend County Purchasing Department  
Gilbert D. Jalomo, Jr., CPPB  
4520 Reading Road, Suite A  
Rosenberg, Texas 77471

Mark Vogler, PE  
Fort Bend County Drainage District

P.O. Box 1028  
Rosenberg, Texas 77471

- 5.04 Either party may designate a different address by giving the other party ten (10) days written notice.

#### SECTION VI LIMIT OF APPROPRIATION

- 6.01 Prior to the execution of this Agreement, Contractor has been advised by District, and Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence to this contract, that District shall have available the total maximum sum of \$415,900.00, specifically allocated to fully discharge any and all liabilities which may be incurred by District.
- 6.02 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this contract, that the total maximum compensation that Contractor may become entitled to hereunder and the total maximum sum that District shall become liable to pay to Contractor hereunder shall not under any conditions, circumstances or interpretations thereof exceed the sum of \$415,900.00.

#### SECTION VII SUCCESSORS AND ASSIGNS

- 7.01 District and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement.
- 7.02 Neither District nor Contractor shall assign, sublet or transfer its or his interest in this Agreement without the prior written consent of the other.
- 7.03 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public and/or governmental body that may be a party hereto.

#### SECTION VIII PUBLIC CONTACT

- 8.01 Contact with the any media outlet, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of District.
- 8.02 Under no circumstances, whatsoever, shall Contractor release any material or information developed or received in the performance of its services hereunder without the express written permission of District, except where required to do so by law.

#### SECTION IX COMPLIANCE AND STANDARDS

Contractor shall render the services hereunder in accordance with generally accepted standards of Contractors practicing in Fort Bend County, Texas applicable thereto and shall use that customary degree of care and skill commensurate with the profession similar to the Project to comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services to be rendered hereunder, and Contractor's performance.

SECTION X  
OWNERSHIP OF DOCUMENTS

- 10.01 District shall be the absolute and unqualified owner of all drawings, preliminary layouts, record drawings, sketches and other documents prepared pursuant to this Agreement by the Contractor and his Contractors (deliverables).
- 10.02 No reuse fees or royalty payments will be paid to the Contractor in connection with future reuse or adaptation of designs derived under this contract.
- 10.03 Copies of all complete or partially completed mylar reproducible, preliminary layouts, record drawings, digital files, sketches and other documents prepared pursuant to this Agreement shall be delivered to District when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first, as provided in this Agreement.
- 10.04 Contractor is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, or from duplicating the appearance of the Project depicted in the deliverables for any without the prior express written permission of District.
- 10.05 The documents referenced in this Section are not intended or presented by the Contractor to be suitable for reuse by District or others on extensions of this Project or on other unrelated projects.
- 10.06 Any adaptation or use by District of such documents on extension of this Project or other unrelated projects shall be at District's sole risk.

SECTION XI  
INDEMNIFICATION

- 11.01 **CONTRACTOR SHALL SAVE HARMLESS DISTRICT FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, BUT ONLY TO THE EXTENT OR DEGREE ON A COMPARATIVE BASIS OF FAULT ARISING FROM ACTIVITIES OF THE CONTRACTOR, ITS AGENTS, CONTRACTORS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**
- 11.02 **CONTRACTOR SHALL ALSO SAVE HARMLESS DISTRICT FROM AND AGAINST ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES WHICH MIGHT BE INCURRED BY DISTRICT, IN LITIGATION OR OTHERWISE RESISTING SAID CLAIMS OR LIABILITIES THAT MIGHT BE IMPOSED ON DISTRICT AS THE RESULT OF SUCH NEGLIGENT ACTIVITIES BY THE CONTRACTOR, ITS AGENTS, CONTRACTORS OR EMPLOYEES.**

SECTION XII  
MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent written modification signed by both parties hereto.

SECTION XIII  
MISCELLANEOUS

- 13.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 13.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 13.03 Contractor agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office may not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorneys Office was offered solely to benefit its client; Contractor and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 13.04 If there is a conflict between this Agreement and Exhibit A, the provisions of this Agreement shall prevail.

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SECTION XIV  
EXECUTION

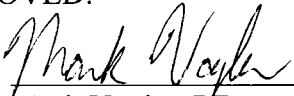
This Agreement shall become effective upon execution by District.

FORT BEND COUNTY DRAINAGE DISTRICT:

  
\_\_\_\_\_  
Robert E. Hebert, County Judge

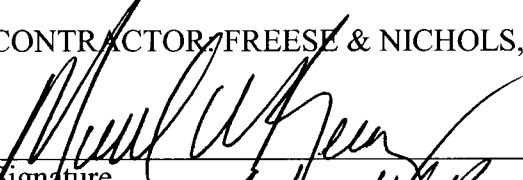
4-24-2012  
Date

APPROVED:

By:   
\_\_\_\_\_  
Mark Vogler, PE  
Fort Bend County Drainage District

4/17/12  
Date

CONTRACTOR, FREESE & NICHOLS, INC.

  
\_\_\_\_\_  
Signature  
Printed Name: Michael W. Reedy  
Title: Vice President

4/11/2012  
Date

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$415,900.00 to accomplish and pay the obligation of the District under this contract.

  
\_\_\_\_\_  
Ed Sturdivant, Fort Bend County Auditor

Exhibit A: Contractor Proposal

Exhibit A

**SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER**

The scope of services which follows is focused on Phase IV of a multi-phase project meant to assist the Fort Bend County Drainage District in the construction phase services for Big Creek Spillway Reconstruction. During construction Freese and Nichols, Inc. (FNI) will perform the project management, construction management, construction representation, construction inspection and Engineer of Record activities in accordance with the requirements detailed in attached Scope of Services and attachments. This includes performing construction management and inspection, construction contract administration, review of all material testing reports, preparation of daily construction reports and site visit reports. FNI will also review and approve all contractor pay requests and verify all claimed materials on hand. As the project nears completion we will prepare final completion punch lists and reports, which will ultimately result in a recommendation of final acceptance.

The following services are exclusive to Phase IV.

FNI will render the following professional services associated with the construction of the Big Creek structure:

1. Basic Services include these specific tasks:
  - a. Project Management
  - b. Engineer of Record Services During Construction
  - c. Construction Management
  - d. Construction Contract Administration
  - e. Document Control
  - f. Resident Project Representative
  - g. Construction Closeout Activities
  - h. Pre-construction conference
  - i. Onsite inspection and reporting
  - j. Construction coordination meeting
  - k. Material inspection coordination
  - l. Proposed change order identification & tracking
  - m. Completion punch lists
  - n. Project completion reporting
  - o. Complete Record Drawings
2. Special Services Specific tasks:
  - a. Material Testing Project Management
  - b. Contract with 3<sup>rd</sup> Party Material Testing Subconsultant to provide material testing in accordance with the project contract documents

ARTICLE I

**BASIC SERVICES:** FNI shall render the following professional services in connection with the development of the Project in accordance with construction duration of 240 calendar days:

- A. **CONSTRUCTION PHASE:** Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. FNI will endeavor to protect OWNER in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. 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.
1. Assist OWNER in conducting pre-construction conference with the Contractor(s), review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract, and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.
  2. Establish communication procedures with the OWNER and contractor. Submit monthly reports of construction progress. Reports will describe construction progress in general terms and summarize project costs, cash flow, construction schedule and pending and approved contract modifications.
  3. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
  4. Based on FNI's observations as an experienced and qualified design professional and review of the Payment Requests and supporting documentation submitted by Contractor, determine the amount that FNI recommends Contractor be paid on monthly and final estimates, pursuant to the General Conditions of the Construction Contract.
  5. The Engineer will make up to Sixteen (16) site visits and the Construction Manager will make up to Eight (8) site visits appropriate to the stage of construction to the site (as distinguished from the continuous services of a Resident Project Representative) to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the OWNER against defects and deficiencies in the work of Contractors and will report any observed deficiencies to OWNER. Visits to the site in excess of the specified number are an additional service.
  6. Notify the contractor of non-conforming work observed on site visits. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.

7. Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project. The cost of such quality control shall be paid by OWNER and is not included in the services to be performed by FNI.
8. Interpret the drawings and specifications for OWNER and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by OWNER, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.
9. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the OWNER to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the OWNER. Documentation of field orders, where cost to OWNER is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the Owner are an additional service. Substitutions of materials or equipment or design modifications requested by the OWNER are an additional service.
10. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the OWNER on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the OWNER if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.
11. Assist in the transfer of and acceptance by the construction contractor of any Owner furnished equipment or materials.
12. Conduct, in company with OWNER's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Assist the City in obtaining legal releases, permits, warranties, spare parts, and keys from the contractor. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two trips are an additional service.
13. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Two (2) sets of prints of "Record Drawings" shall be provided by FNI to OWNER.

## ARTICLE II

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

- A. Field surveying required for the preparation of designs and drawings.
- B. Field layouts or the furnishing of construction line and grade surveys.
- C. GIS mapping services or assistance with these services.
- D. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
- E. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by OWNER.
- F. Providing renderings, model, and mock-ups requested by the OWNER.
- G. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by OWNER or 2) due to other causes not solely within the control of FNI.
- H. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required in connection with the replacement of such Work.
- I. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by OWNER.
- J. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- K. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- L. Conducting pilot plant studies or tests.
- M. Preparing Operation and Maintenance Manuals or conducting operator training.
- N. Preparing data and reports for assistance to OWNER in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- O. Furnishing the services of a Resident Project Representative to act as OWNER's on-site representative during the Construction Phase. The Resident Project Representative will act as directed by FNI in order to provide more extensive representation at the Project site during the Construction Phase. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative and assistants, FNI shall endeavor to provide further protection

for OWNER against defects and deficiencies in the work. Furnishing the services of a Resident Project Representative is subject to the provisions of Article I, D and Attachment RPR.

If OWNER provides personnel to support the activities of the Resident Project Representative who is FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such personnel will be set forth in an Attachment attached to and made a part of this AGREEMENT before the services of such personnel are begun. It is understood and agreed that such personnel will work under the direction of and be responsible to the Resident Project Representative. OWNER agrees that whenever FNI informs him in writing that any such personnel provided by the OWNER are, in his opinion, incompetent, unfaithful or disorderly, such personnel shall be replaced.

- P. Furnishing Special Inspections required under chapter 17 of the International Building Code. These Special Inspections are often continuous, requiring an inspector dedicated to inspection of the individual work item, and they are in addition to General Representation and Resident Representation services noted elsewhere in the contract. These continuous inspection services can be provided by FNI as an Additional Service.
- Q. Preparation of Conformed or "As Bid" plans and specifications for use during the construction phase. These documents shall involve the incorporation of addenda items into the Contract Documents through modification of the electronic files and reprinting of the plans and specifications inclusive of the incorporated changes.
- R. Assisting OWNER in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- S. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- T. Assisting OWNER in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- U. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- V. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- W. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- X. Services required to resolve bid protests or to rebid the projects for any reason.
- Y. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- Z. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.

- AA. Providing services after the completion of the construction phase not specifically listed in Article I.
- BB. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the OWNER.
- CC. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- DD. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.
- EE. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- FF. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- GG. Provide follow-up professional services during Contractor's warranty period.
- HH. Provide Geotechnical investigations, studies and reports.

ARTICLE III

**TIME OF COMPLETION:** FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

Construction duration of 240 days plus 60 days for final closeout

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

ARTICLE IV

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

- A. Owner recognizes and expects that certain Change Orders may be required. Unless noted otherwise, the Owner shall budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.

Further, Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omission, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change

Orders”). Accordingly, Owner agrees to pay for Change Orders and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the aggregate costs of all such approved Covered Change Orders exceed 2% for new construction and 4% for reconstruction. Any responsibility of Engineer for the costs of Covered Changed Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include:

- any costs that Owner would have incurred if the Covered Change Order work had been included originally in the Contract Documents and without any other error or omission of Engineer related thereto,
- Any costs that are due to unforeseen site conditions, or
- Any costs that are due to changes made by the Owner.
- Any costs that are due to the Contractor

Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percent of Construction Cost stated above or for any other Change Order. Wherever used in this document, the term Engineer includes Engineer’s officers, directors, partners, employees, agents, and Engineers Consultants.

- B. Designate in writing a person to act as OWNER’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 OWNER’s policies and decisions with respect to FNI’s services for the Project.
- C. Provide all criteria and full information as to OWNER’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 OWNER 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 OWNER 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.
- G. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- H. OWNER 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. OWNER 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 OWNER.

- I. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER 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 OWNER 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 OWNER 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.
- J. OWNER shall determine, prior to receipt of construction bid, if FNI is to furnish Resident Project Representative service so the Bidders can be informed.
- K. If OWNER designates a person to serve in the capacity of Resident Project Representative who is not FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in an Attachment attached to and made a part of this AGREEMENT before the Construction Phase of the Project begins. Said attachment shall also set forth appropriate modifications of the Construction Phase services as defined in Attachment SC, Article I, C, together with such adjustment of compensation as appropriate.
- L. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- M. Give prompt written notice to FNI whenever OWNER 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.
- N. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this AGREEMENT or other services as required.
- O. Bear all costs incident to compliance with the requirements of this Article IV.

ARTICLE V

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

- Owner's Designated Representative - Mr. Mark Vogler, PE, CFM, Fort Bend County Drainage District, 1004 Blume Rd., Rosenberg, TX 77471, 281-342-2863 phone, 281-342-9130 fax, voglemar@co.fort-bend.tx.us.
- Owner's Accounting Representative - Mr. Mark Vogler, PE, CFM, Fort Bend County Drainage District, 1004 Blume Rd., Rosenberg, TX 77471, 281-342-2863 phone, 281-342-9130 fax, voglemar@co.fort-bend.tx.us.
- Freese and Nichols' Project Manager – Rich Heine, 11200 Broadway Street, Suite 2332, Pearland, Texas 77584, 832-456-4707 phone, 832-456-4701, rrh@freese.com.
- Freese and Nichols' Accounting Representative - Judy Blair, 11200 Broadway Street, Suite 2332, Pearland, Texas 77584, 832-456-4711 phone, 832-456-4701 fax, jfb@freese.com.

**COMPENSATION  
LUMP SUM WITH ADDITIONAL WORK BASED ON COST TIMES MULTIPLIER**

A. **Basic Services:** Compensation to FNI for the Basic Services in Attachment SC shall be the lump sum of Four Hundred Fifteen Thousand Nine Hundred Dollars (\$415,900). 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.

B. **Schedule of Charges for Additional Work:**

Staff Member Salary Cost Times Multiplier of 2.14

Resident Representative Salary Cost Times Multiplier of 2.0

Salary Cost is defined as the cost of payroll of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc., for the time directly chargeable to the project, plus social security contributions, unemployment compensation insurance, retirement benefits, medical and insurance benefits, longevity payments, sick leave, vacation and holiday pay applicable thereto. (Salary Cost is equal to 1.632 times payroll. This factor is adjusted annually).

Other Direct Expenses Actual Cost Times Multiplier of 1.15

Other direct expenses shall 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.

Rates for In-house Services

**Computer**

\$10.00 per hour

**Plotter**

Bond \$ 2.50 per plot  
Special \$ 5.00 per plot  
Color \$ 5.75 per plot

**Testing Apparatus**

Density Meter \$700.00 per month  
Gas Detection \$ 20.00 per test

**Printing**

**Black and White**

\$0.10 per copy

**Color**

\$0.50 per copy

**Binding**

\$5.75 per book

3-10-04

## PROJECT REPRESENTATION

A. The ENGINEER will have a Resident Project Representative on the Site for a construction duration of 240 days, using an effort of working 5 days per week at 10 hours per day. The duties, responsibilities and the limitations of authority of the Resident Project Representative, and designated assistants, are as follows:

1. Resident Project Representative is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding Resident Project Representative's actions. Resident Project Representative's dealings in matters pertaining to the on-site Work shall in general be with ENGINEER and CONTRACTOR, keeping OWNER advised as necessary. Resident Project Representative's dealings with Subcontractors shall only be through or with full knowledge and approval of CONTRACTOR. Resident Project Representative shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of Resident Project Representative:

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.
2. Conferences and Meetings: Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
  - a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
  - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

4. Shop Drawings and Samples:
  - a. Record date of receipt of Shop Drawings and Samples.
  - b. Receive Samples which are furnished at the Site by CONTRACTOR, and notify ENGINEER of availability of Samples for examination.
  - c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.
5. Review of Work, Rejection of Defective Work, Inspections and Tests:
  - a. Conduct on-site observations of the Work in progress to determine if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to ENGINEER whenever Resident Project Representative believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work the Resident Project Representative believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
  - c. Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the CONTRACTOR maintains adequate records thereof; and observe record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
  - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
6. Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
7. Request for Revisions: Consider and evaluate CONTRACTOR's suggestions for revisions to Drawings or Specifications and report with Resident Project Representative's recommendations to ENGINEER. Transmit to CONTRACTOR in writing decisions as issued by ENGINEER.
8. Records:
  - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents, including all Work Change Directives, Addenda, Change Orders, Field Orders, Written Amendments, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, submittals and correspondence received from and delivered to CONTRACTOR and other Project related documents.

9. Reports:
    - a. Furnish to ENGINEER periodic reports as required of progress of the work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawings and Sample submittals.
    - b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
    - c. Draft proposed Written Amendments, Change Orders and Work Change Directives, obtaining backup material from CONTRACTOR and recommend to ENGINEER Written Amendments, Change Orders, Work Change Directives, and Field Orders.
    - d. Report immediately to ENGINEER and OWNER the occurrence of any accident.
  10. Payment Requests: Review Applications for Payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to OWNER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment at the Site but not incorporated in the Work.
  11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.
  12. Completion:
    - a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
    - b. Observe whether CONTRACTOR has performed inspections required by laws or regulations, ordinances, codes or order applicable to the Work, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
    - c. Conduct a final inspection in the company of ENGINEER, OWNER and CONTRACTOR and prepare a final list of items to be completed or corrected.
    - d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.
- C. Limitations of Authority of Resident Project Representative:
1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by ENGINEER.
  2. Shall not exceed limitations of ENGINEER's authority as set forth in Agreement or the Contract Documents.
  3. Shall not undertake any of the responsibilities of CONTRACTOR, Subcontractor, Suppliers, or CONTRACTOR's superintendent.

4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work or any activities or operations of OWNER or CONTRACTOR.
6. Shall not accept shop drawing or sample submittals from anyone other than the CONTRACTOR.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others, except as specifically authorized by ENGINEER.

