

PROFESSIONAL SERVICES AGREEMENT
AWIA EMERGENCY RESPONSE PLAN
PROJECT NO. 602001

EXHIBIT "A"

STATE OF TEXAS §

COUNTY OF TARRANT §

This Agreement is entered into by City of Keller, Texas, hereinafter called "Client" and Freese and Nichols, Inc., hereinafter called "FNI." In consideration of the Agreements herein, the parties agree as follows:

- 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 AWIA Emergency Response Plan (Water and Wastewater).
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with 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 for time and materials in accordance with Attachment CO – Compensation which is attached and made a part of this Agreement. FNI shall perform professional services as outlined in the "Scope of Services" for a not to exceed fee of Seventy-Four Thousand, \$74,000.

If FNI's services are delayed or suspended by Client, or if FNI's services 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.

- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement as set forth as Attachment TC – Terms and Conditions of Agreement shall govern the relationship between the Client and FNI.

Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and FNI, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and FNI and not for the benefit of any other party.

This Agreement constitutes the entire Agreement between Client and FNI and supersedes all prior written or oral understandings.

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

Freese and Nichols, Inc.

By: Scott A. Cole

Scott A. Cole, Vice President

Print Name and Title

Date: 02-03-2021

ATTEST: Melissa Brumger

City of Keller, Texas

By: _____

Print Name and Title

Date: _____

ATTEST: _____

SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT

PROJECT UNDERSTANDING

Within six months of completion and certification of the RRA, America's Water Infrastructure Act of 2018, Section 2013 also requires a letter of certification to EPA that the Emergency Response Plan (ERP) for a utility is developed or updated. The ERP can be developed based on existing emergency plans but is required to include response protocols for any type of emergency or event identified as a threat during the RRA.

While not required by the AWIA of 2018, the City has elected to evaluate its wastewater collection system using the same process required of water systems by the AWIA.

EMERGENCY RESPONSE PLAN

The AWIA requires the Emergency Response Plan to include:

- Strategies and resources to improve the resilience of the system, including the physical security and cybersecurity of the system
- Plans and procedures that can be implemented, and identification of equipment that can be utilized, in the event of a malevolent act or natural hazard that threatens the ability of the utility to deliver safe drinking water
- Actions, procedures, and equipment which can obviate or significantly lessen the impact of a malevolent act or natural hazard on the public health and the safety and supply of drinking water provided to communities and individuals, including the development of alternative water source options, relocation of water intakes, and construction of flood protection barriers
- Strategies that can be used to aid in the detection of malevolent acts or natural hazards that threaten the security or resilience of the system
- Coordination with the Local Emergency Planning Committee (LEPC)
- Record documentation of the Emergency Response Plan for five (5) years upon certification

The detailed ERP will be conducted generally following the protocols detailed in the M19 (Emergency Planning for Water and Wastewater Utilities) guidance developed by the AWWA. The ERP will be finalized and then certified by the City to the Administrator of the Environmental Protection Agency (EPA) within six (6) months of certification of the City's Risk and Resilience Assessment (generally by Dec 30, 2021) to comply with the deadline requirements for systems serving a population less than 50,000 but greater than 3,300.

ARTICLE I

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

PHASE 2 - EMERGENCY RESPONSE PLAN

The ERP includes two workshops with the City's designated ERP team and one final briefing. An ERP compliant with the requirements of AWIA of 2018 will be provided. Due to the sensitive nature of the content, the ERP report is recommended to be protected from public access within applicable law. The ERP will include documentation applicable to the water utility.

Electronic document transfer for this project will be provided to the City through a secure file-sharing platform. Confidential documents will not be emailed. Hard copies of the ERP will be hand-delivered.

ERP Task 1 – Project Kickoff Coordination Meeting, Data Collection and Review

FNI will conduct a kickoff meeting with the City staff to introduce the FNI project team, review the scope of services and project schedule, and identify communication approaches. The kickoff meeting will also include a discussion of the background/history related to emergency response planning for City.

During the meeting, FNI will meet with the City to determine the ERP team participants, needs and project schedule. The team members should be experts in one or more of the following areas or have a role in the execution of the ERP:

- Utility management
- Emergency management
- Water distribution system production and operations
- Wastewater collection system conveyance and operations
- SCADA operations
- Human resources management
- Procurement
- Other representatives include members of local police, fire and the local emergency planning committee

The following items will be discussed during the meeting:

- Project goals
- Project schedule
- Data collection for review by FNI
- Communication and information flow for the project
- Additional entities to coordinate with in the preparation of the ERP
- Results of the Risk and Resilience Assessment

The City will provide the following documents, if available, to FNI for review:

- Existing emergency response plans for the utility or the overall organization
- Emergency preparedness plans
- Safety and security procedures
- Hazard mitigation plans

- System recovery plans
- System diagrams
- Business continuity plans / Continuity of operations plans
- Source water protection plans
- Interlocal agreements with neighboring utilities
- Local natural hazard mitigation plan(s)
- Crisis communications plan
- Other documents that may be related to the preparedness of the water system.

Deliverable:

1. FNI will provide meeting minutes within seven (7) days to summarize major discussion items, decisions, and action items.

ERP Task 2 – Review of Existing Plans and Preparation of Initial ERP Outline (and Initial Workshop)

FNI will review the data collected for the City’s water system to identify gaps and necessary information for an up-to-date ERP. FNI will prepare an initial inventory of available information to review/update and gaps in information where development by the ERP team will be required. The ERP will be developed generally according to the outline identified in the AWWA M19 guidance document. FNI will coordinate with the City to utilize the City’s existing ERP format as practicable.

FNI will conduct an initial workshop (ERP Preparation Workshop) with the ERP team. In this workshop, FNI will provide an overview of the proposed ERP contents and approach and the current status of information to fulfill these needs. A schedule of up to two (2) total ERP workshops will be established. Additional personnel necessary for the proper preparation of the ERP will be identified for inclusion in one or more of the future workshops.

FNI will coordinate across the multiple utility master plans being performed internally to incorporate findings and recommendations from those plans into the ERP.

Deliverable

1. ERP data gap analysis
2. FNI will provide meeting minutes within seven days of the meeting to summarize major discussion items, decisions, and action items.

ERP Task 3 –Emergency Response Plan Preparation Workshops

Through a series of up to two (2) workshops, FNI will facilitate the ERP team to identify the components of the ERP. The critical components of an ERP include the following:

1. System overview
2. Incident management overview
3. Roles and responsibilities, based on NIMS and ICS
4. Internal and external contact information
5. General emergency response guidance
6. Communications plan
7. Record-keeping

Hazard-specific plans addressing relevant threats identified in the Risk and Resilience Assessment will be developed through the workshops. FNI will provide initial content for the hazard-specific plans based on the City’s existing ERP and/or industry-standard guidance.

Deliverable

1. FNI will provide meeting minutes within seven (7) days to summarize major discussion items, decisions, and action items.
2. Draft components of ERP content building on the output of each workshop

ERP Task 4 – Draft Emergency Response Plan

FNI will compile the information collected and developed in the series of workshops to prepare a draft ERP. FNI will meet with the City to present a briefing on the draft ERP, provide implementation recommendations, and solicit comments on the plan. FNI will include recommendations from any of the utility master plans that are pertinent to the ERP in the draft plan.

Deliverable:

1. FNI will deliver the draft ERP to the City in electronic PDF format through secure file transfer protocols for review and comment. Upon request, five (5) hard copies of the draft ERP will be provided.
2. FNI will provide meeting minutes within seven days of the meeting to summarize major discussion items, decisions, and action items.

ERP Task 5 – Final ERP and Certification of Compliance

Upon receipt of final comments on the draft ERP, FNI will finalize the ERP. FNI will assist the City to complete and submit the certification of the Emergency Response Plan through the online EPA portal. A copy of the certification will be maintained in the City's ERP.

Deliverable:

1. FNI will deliver one electronic PDF copy of the final ERP. Upon request, FNI will provide up to five (5) hard copies of the final ERP.

ARTICLE II

SPECIAL SERVICES: FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project: None

ARTICLE III

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

ARTICLE IV

SCHEDULE: Professional services will commence upon Notice to Proceed (NTP) from the City of Keller. The following is the anticipated schedule for the project. Dates listed below may change based on the actual NTP date.

| Task | Task Name | Completion Timeline |
|-------------|--|---|
| 1 | Project Kickoff Meeting, Data Collection and Review | 4 weeks from NTP |
| 2 | Review of Existing Plans and Preparation of Initial ERP Outline (and Initial Workshop) | 10 weeks from NTP |
| 3 | Emergency Response Plan Preparation Workshops (2) | 20 weeks from NTP |
| 4 | Draft Emergency Response Plan | 24 weeks from NTP |
| 5 | Final ERP and Certification of Compliance | 32 weeks from NTP (within 6 months from certification of Risk and Resilience Assessment) |

ARTICLE V

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

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

the moneys paid under the construction contract, and such inspection services as Client may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

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

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and Client designate the following representatives:

Client's Designated Representative – Dennis Fritz, P.E.
PO Box 770
Keller, TX 76244
817-743-4083
dfritz@cityofkeller.com

FNI's Designated Representative – Melissa Brunger
2711 North Haskell Ave.
Suite 3300
Dallas, Texas 75204
214-217-2323
melissa.brunger@freese.com

FNI's Accounting Representative – Jana Collier
4055 International Plaza, Suite 200
Ft. Worth, TX 76109
817-735-7354
jvc@freese.com

COMPENSATION

Compensation to FNI for Basic Services in Attachment SC shall be computed on the basis of the following Schedule of Charges, but shall not exceed Seventy Four Thousand Dollars (\$74,000).

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> | |
|-----------------------------|--------------------|------------|
| | <u>Min</u> | <u>Max</u> |
| Professional 1 | 81 | 146 |
| Professional 2 | 95 | 154 |
| Professional 3 | 115 | 220 |
| Professional 4 | 151 | 237 |
| Professional 5 | 188 | 350 |
| Professional 6 | 197 | 391 |
| Construction Manager 1 | 93 | 173 |
| Construction Manager 2 | 109 | 185 |
| Construction Manager 3 | 152 | 217 |
| Construction Manager 4 | 206 | 281 |
| CAD Technician/Designer 1 | 67 | 147 |
| CAD Technician/Designer 2 | 98 | 152 |
| CAD Technician/Designer 3 | 131 | 201 |
| Corporate Project Support 1 | 50 | 122 |
| Corporate Project Support 2 | 71 | 168 |
| Corporate Project Support 3 | 98 | 259 |
| Intern / Coop | 42 | 84 |

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) \$100 |
| <u>Technology Charge</u> | Large Format (per sq. ft.) | | | Water Quality Meter (per day) \$100 |
| \$8.50 per hour | Bond | \$0.25 | \$0.75 | Microscope (each) \$150 |
| | Glossy / Mylar | \$0.75 | \$1.25 | Pressure Recorder (per day) \$200 |
| | Vinyl / Adhesive | \$1.50 | \$2.00 | Ultrasonic Thickness Guage (per day) \$275 |
| | | | | Coating Inspection Kit (per day) \$275 |
| | Mounting (per sq. ft.) | \$2.00 | | Flushing / Cfactor (each) \$500 |
| | Binding (per binding) | \$0.25 | | Backpack Electrofisher (each) \$1,000 |
| | | | | <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 1.10. 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 1.10. 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 February 2020.

the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.

10. **OPINION OF PROBABLE COSTS:** FNI will furnish an opinion of probable project development cost based on present day cost, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices.
11. **CONSTRUCTION REPRESENTATION:** If required by the Agreement, FNI will furnish construction representation according to the defined scope for these services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the Contract Documents. In performing these services, FNI will report any observed deficiencies to Client, however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or the safety precautions and programs incident to the work of the Contractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project. If Client 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.
12. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** Client agrees to include provisions in the General Conditions of the Construction Contract that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the Owner is named as an indemnified party.
13. **PAYMENT:** Progress payments may be requested by FNI based on the amount of Services completed. Payment for the Services of FNI shall be due and payable upon submission of a statement for Services to CLIENT and in acceptance of the Services as satisfactory by the Client. Statements for Services shall not be submitted more frequently than monthly. Any applicable new taxes imposed upon Services, expenses and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.

If Client fails to make any payment due FNI for services and expenses 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 Client, suspend services under this Agreement until FNI has been paid in full, all amounts due for services, expenses and charges.

14. **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.
15. **SUCCESSORS AND ASSIGNMENTS:** Client and FNI each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and FNI are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

Neither Client 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.

16. **PURCHASE ORDERS:** If a Purchase Order is used to authorize FNI's Services, only the terms, conditions/instructions typed on the face of the Purchase Order shall apply to this Agreement. Should there be any conflict between the Purchase Order and the terms of this Agreement, then this Agreement shall prevail and shall be determinative of the conflict.