

RESOLUTION NO. R-2018-71

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING AN ENGINEERING SERVICES AGREEMENT WITH FREESE & NICHOLS FOR DESIGN AND CONSTRUCTION MANAGEMENT SERVICES OF A WATER TREATMENT PLANT AND IMPROVEMENTS ON THE CITY'S SITE LOCATED ON XS RANCH, IN THE AMOUNT OF EIGHT HUNDRED AND THIRTY THOUSAND AND 00/100 DOLLARS (\$830,000.00) ATTACHED AS EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The City of Bastrop City Council understands the importance to public safety provided by providing quality drinking water for its citizens; and

WHEREAS, The City of Bastrop currently owns 3,000 acre-feet of water rights within the XS Ranch and is in the process of acquiring an additional 3,000 acre-feet of water rights for a potential 6,000 acre-feet water supply; and

WHEREAS, The City of Bastrop has completed a pilot well identified as TS-2 and a production well identified as Well "J" on XS Ranch; and

WHEREAS, The City of Bastrop City Council acknowledges the need for water quality testing results, treatment recommendations and a preliminary design for the proposed treatment plant to the City's distribution system; and

WHEREAS, The City of Bastrop City Council understands the importance of consulting on these matters with a licensed engineer; and

WHEREAS, The City of Bastrop understands the importance of focusing on infrastructure improvements in the general area of SH 71 and FM 304; and

WHEREAS, the City of Bastrop has chosen Freese and Nichols from a list of qualified consulting firms identified by City Council on July 10, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1. That the City Council has found Freese and Nichols to be a subject matter expert in the fields of water/wastewater, streets/drainage, hydraulic & hydrology, traffic, construction management, land planning, and architecture.

Section 2. The City Manager is hereby authorized to execute an Engineering Services Agreement between the City of Bastrop and Freese and Nichols, attached as Exhibit A, as well as all other necessary documents.

Section 3. This resolution shall take effect immediately from and after its passage, and it is duly resolved.

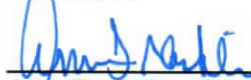
DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 11th day of September 2018.

APPROVED:




Connie B. Schroeder, Mayor

ATTEST:



Anh Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

STATE OF TEXAS §

COUNTY OF TARRANT §

This Agreement is entered into by City of Bastrop, Texas, hereinafter called "Owner" 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: Owner agrees to employ FNI; FNI agrees to perform professional services in connection with various Projects; Owner agrees to pay to FNI compensation. A detailed description of the various Projects scope and fee will be outlined in Task Authorizations as services are requested by Owner. FNI will not begin services until a Task Authorization is agreed upon by FNI and Owner. An example of this Task Authorization is included as Schedule "A."
- II. **SCOPE OF SERVICES:** FNI shall provide professional services in connection with Projects as set forth in Attachment SC - Scope of Services and Responsibilities of Owner which is attached to and made a part of this Agreement. Details concerning the specific Scope of Services for projects will be included in the Task Authorization.
- III. **COMPENSATION:** Owner agrees to pay FNI for all professional services rendered under this Agreement. FNI shall perform professional services as outlined within each Task Authorization issued under this Master Agreement. Fees for services will be negotiated for each Task Authorization.
- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement as set forth as Attachment TC shall govern the relationship between the Owner and FNI.

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

This Agreement constitutes the entire Agreement between Owner and FNI and supersedes all prior written or oral understandings. This Agreement is valid thru August 31, 2020 and may be extended by mutual agreement.

This contract is executed in two counterparts.

IN TESTIMONY HEREOF, they have executed this Agreement, the ____ day of _____ 20____.

ATTEST:

CITY OF BASTROP, TEXAS

By: _____

Print Name & Title

ATTEST:

FREESE AND NICHOLS, INC.
(FNI)

By: _____

Print Name & Title

SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER

ARTICLE I

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

TO BE ESTABLISHED IN EACH TASK AUTHORIZATION

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:

TO BE ESTABLISHED IN EACH TASK AUTHORIZATION

ARTICLE III

TIME OF COMPLETION: FNI agrees to complete the services in accordance with the schedule established in each Task Authorization.

IF FNI's services are delayed or suspended in whole or in part by Owner, or if FNI's services are extended by the Contractor's actions or inactions for more than 90 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation.

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.

PROJECT REPRESENTATION

1. If Resident Project Representative Services are to be provided, Attachment RPR should be made a part of the Agreement for Professional Services.
- A. The ENGINEER will have a Resident Project Representative on the Site. 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 requested.
 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. Based on the information, knowledge and belief of RPF, 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.

ATTACHMENT RPR

- 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. When known, 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.