

## NOTICE OF SPECIAL CITY COUNCIL MEETING - WORKSHOP CITY OF TOMBALL, TEXAS



**Monday, April 21, 2025  
5:00 PM**

Notice is hereby given of a Special meeting of the Tomball City Council, to be held on Monday, April 21, 2025 at 5:00 PM, City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

The public toll-free dial-in numbers to participate in the telephonic meeting are any one of the following (dial by your location): +1 312 626 6799 US (Chicago); +1 646 876 9923 US (New York); +1 301 715 8592 US; +1 346 248 7799 US (Houston); +1 408 638 0968 US (San Jose); +1 669 900 6833 US (San Jose); or +1 253 215 8782 US (Tahoma) - Meeting ID: 844 6174 9051 Passcode: 961165. The public will be permitted to offer public comments telephonically, as provided by the agenda and as permitted by the presiding officer during the meeting.

- A. Call to Order
- B. Public Comments and Receipt of Petitions; *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law - GC, 551.042.]*
- C. General Discussion
  - 1. Discuss scheduling a pre-budget workshop regarding the Proposed Fiscal Year 2025-2026 Budget.
  - 2. Discuss City Council Ethics, Rules & Procedures.
- D. Proposed Future Agenda Items (To be discussed in order or at Councils discretion, time permitting)
  - 1. Workshop Discussion Only – Approve a services agreement with Roofing Solutions, LLC for Contract Number 2025-10012, City Hall and Police Department

Roof Replacement (CSB No, 2025-11), for a total contract amount not-to-exceed \$181,000, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. This expenditure is included in the Fiscal Year 2024-2025 budget.

2. Workshop Discussion Only – Adopt, on First Reading, Ordinance No. 2025-16, an Ordinance of the City of Tomball, Texas Authorizing and Approving the Calendar Year 2025 Annual Service and Assessment Plan (SAP) Update for the Winfrey Estates Public Improvement District Number 12 (PID 12).
3. Workshop Discussion Only – Approve Supplemental Number One, amending the Professional Services Agreement with Freese & Nichols, Inc. for Project Number 2023-10019, Baker Drive Water Plant project, for a net decrease of \$22,827, for a total contract amount not-to-exceed \$1,826,260, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. This expenditure is included in the Fiscal Year 2024-2025 Capital Improvement Budget.
4. Workshop Discussion Only – Approve Supplemental Number Two, amending the Professional Services Agreement with Freese & Nichols, Inc. for Project Number 2023-10010, East Water Plant project, for a net decrease of \$181,019, for a total contract amount not-to-exceed \$2,435,105, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. This expenditure is included in the Fiscal Year 2024-2025 Capital Improvement Budget.
5. Workshop Discussion Only – Approve Supplemental Number Three, amending the Professional Services Agreement with Freese & Nichols, Inc. for Project Number 2019-10008, FM 2920 Lift Station Consolidation project, in the amount of \$176,021, for a total contract amount not-to-exceed \$2,394,179, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. This expenditure is included in the Fiscal Year 2024-2025 Capital Improvement Budget.

E. Adjournment

### **C E R T I F I C A T I O N**

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 16th day of April 2025 by 6:00 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

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Shannon Bennett, TRMC  
Assistant City Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (281) 290-1019 for further information.

# City Council Meeting Agenda Item Data Sheet

Meeting Date: April 21, 2024

**Topic:**

Discuss scheduling a pre-budget workshop regarding the Proposed Fiscal Year 2025-2026 Budget.

**Background:**

Staff recommend scheduling a pre-budget workshop on April 28, 2025, at 4:00 p.m. The purpose is to discuss general direction and priorities for the up-and-coming FY 25-26 Budget.

**Origination:**

**Recommendation:**

n/a

Party(ies) responsible for placing this item on agenda: David Esquivel

**FUNDING (IF APPLICABLE)**

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: # \_\_\_\_\_

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed \_\_\_\_\_ Approved by \_\_\_\_\_  
Staff Member Date City Manager Date



# City Council Meeting Agenda Item Data Sheet

Meeting Date: April 21, 2025

**Topic:**

Discuss City Council Ethics, Rules & Procedures

**Background:**

Staff have been tasked with revising the Code of Ethics, originally adopted in 1993. After conducting extensive research on policies from other cities, the City of Pearland's policy was used as a model for guidance.

The attached draft includes Rules and Procedures and ethical procedures for the City Council.

**Origination:** Mayor Lori Klein Quinn

**Recommendation:**

N/A

**Party(ies) responsible for placing this item on agenda:** David Esquivel, PE

**FUNDING (IF APPLICABLE)**

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: # \_\_\_\_\_

If no, funds will be transferred from account: # \_\_\_\_\_ To Account: # \_\_\_\_\_

**Signed:** \_\_\_\_\_ **Approved by:** \_\_\_\_\_  
Staff Member Date City Manager Date

## **CITY COUNCIL ETHICS, RULES AND ORDER OF BUSINESS**

### **City of Tomball, Texas**

#### **ORGANIZATION**

The governing body of the City shall consist of the Mayor and five (5) council members ("Council"). The Mayor is elected in the City at large, and the Council members are elected at large by positions 1, 2, 3, 4 and 5. The Mayor shall be the presiding officer for Council meetings and, pursuant to the City's Charter, shall only vote in the event of a tie vote. These Rules shall serve as guidelines for the organization and conduct of Council to ensure that the City is governed in an orderly and consistent manner.

#### **1. REGULAR MEETINGS**

The Council shall hold no less than two regular meetings per month in accordance with Section 3.08 of the City Charter. Regular meetings shall be held at dates and times adopted by City Council Resolution and shall generally be on the 1<sup>st</sup> and 3<sup>rd</sup> Monday of each month at 6:00 P.M. Unless designated otherwise, meetings of the City Council shall take place in the Council Chambers of City Hall, and the public is invited to attend the meetings. If the Council meets at a place or time other than its regular meeting place, then public notice to such effect shall be posted in accordance with the Texas Open Meetings Act.

#### **2. SPECIAL MEETINGS**

A special meeting may be called upon written request of the Mayor or any two (2) council members. Notice of special meetings must be posted in accordance with the Texas Open Meetings Act.

#### **3. JOINT MEETINGS**

The Council may hold Joint Meetings with various Boards, Commissions, and/or various governmental entities that share a community interest with the City. Such meetings shall be scheduled for a specific purpose or goal, agreed to by the City and the other board or entity prior to the meeting and posted in accordance with the Texas Open Meetings Act.

#### **4. EXECUTIVE SESSIONS**

Pursuant to the Texas Open Meetings Act, the Council may conduct closed meetings that are not open to the public when the following matters are considered:

- A. Consultation with an attorney regarding pending or contemplated litigation; a settlement offer; or to receive advice on legal matters not associated with litigation;
- B. Deliberations associated with the sale, purchase or exchange of real property;
- C. Personnel matters;

- D. Deliberations regarding security matters;
- E. Deliberations regarding economic development negotiations; or
- F. Any other purpose permitted by the Texas Open Meetings Act.

The purpose of an executive session shall be stated in the motion to call the closed session. Any action taken on a matter discussed in executive session shall occur in an open meeting following the deliberation in closed session.

## 5. ATTENDANCE

Serving on the City Council is a privilege that carries with it the responsibility to represent constituents through participation in Council meetings. Attendance at council meetings is critical to fulfillment of this responsibility and accountability to public. Therefore, Council members unable to attend a Council meeting shall be required to contact the City Secretary's Office no less than two (2) hours prior to the meeting, stating the reason for such absence. The City Secretary shall inform the Council of the reason for the member's absence prior to the City Council meeting. For Regular meetings of the City Council, an agenda item shall be placed on the next Regular meeting agenda following the Council members absence for City Council to consider whether the absence is excused or unexcused. Failure to comply with the notification provisions of this section, except in cases of emergency, may result in an unexcused absence.

An excused absence from a council meeting is when a council member notifies the council in advance and provides a valid reason for their inability to attend. The definition of an excused absence is typically outlined in the council's bylaws, rules of procedure, or local government policies.

### Common Reasons for Excused Absences:

- Illness or medical emergency (personal or immediate family)
- Family emergencies or obligations
- Pre-approved travel for official government business
- Unavoidable work commitments
- Military service
- Other reasons deemed acceptable by the council

An unexcused absence from a council meeting occurs when a council member fails to attend without providing prior notice or a valid reason as defined by the council's bylaws, rules of procedure, or local government policies.

### Common Reasons for an Unexcused Absence:

- Failure to notify the Mayor, Chair, or City Secretary in advance
- No valid reason provided under council guidelines
- Repeated or chronic absences without justification
- Skipping a meeting for personal convenience without approval

## 6. AGENDA

The City Manager and the City Secretary, with consultation and concurrence of the Mayor, shall prepare an agenda for business to be considered at each regular Council meeting. It shall be the practice of the City to include on any regular Council meeting agenda all items that are deemed appropriate by the City Manager, the Mayor, or any two (2) Councilmembers.

Councilmembers desiring to make individual presentations or sharing of information, outside of material provided in the agenda packet, regarding any posted agenda items shall submit the additional presentation material to the City Manager by noon on the day of the meeting.

For the Mayor or any two (2) Councilmembers to have an item placed on the regular meeting agenda, the request shall be in writing and shall be filed with the City Manager no later than noon on the Monday the week before the regular meeting at which it is requested for consideration. If the filing is later than noon on the Monday before the regular meeting, the item shall be placed on the agenda of the next regular meeting, unless the Mayor and/or City Manager determine that delaying the requested item would be contrary to the City's best interest. The Agenda for the City Council Regular Meetings shall be developed by the City Manager and published by the City Secretary in the manner generally prescribed as follows:

- A. Call to Order
- B. Invocation
- C. Pledges of Allegiance to the United States of America flag and Texas flag
- D. Public Comments
- E. Recognition and Awards (if required) \*
- F. Reports & Announcements
- G. Old Business Consent Agenda
- H. Matters Removed from Old Consent Agenda
- I. New Business Consent
- J. Matters Removed from New Consent Agenda
- K. New Business
- L. Executive Session (if required)
- M. Adjournment

**\*At the discretion of the Mayor, special recognitions and awards may be presented prior to the Call to Order for a City Council meeting.**

## 7. PUBLIC COMMENT RULES

- A. All members of the audience addressing the Council ("Speaker") shall direct their remarks to the person in charge of the meeting ("Chair").
- B. No Speaker shall address the Council unless recognized by the Chair for that purpose.
- C. Remarks shall be limited to those pertaining to matters before the City Council, to City business or policy, or to issues of community concern or interest. Profane, vulgar or abusive language or personal attacks will not be tolerated.

### If not followed consequences include:

- **Verbal Warning** – The presiding officer (e.g., the Mayor or Council Chair) may issue a warning to the individual, reminding them of decorum rules.
- **Removal from the Meeting** – Law enforcement or security personnel may be asked to escort the disruptive individual out of the meeting.
- **Ban from Future Meetings** – In some cases, repeat offenders may be prohibited from attending future Council meetings for a specified period.
- **Legal Consequences** – If the language includes threats or harassment, the individual may face criminal charges such as disorderly conduct or trespassing.

- D. No Speaker shall continue to address the Council after being informed by the Chair that the Speaker's time for addressing the Council has expired.
- E. The Speaker shall be limited to 3 minutes to address the Council. If a single individual has been designated, on behalf of a larger group, to speak for the group, then such individual shall be allowed a maximum of 5 minutes to speak. The Chair has the authority to grant additional time, if requested by a Speaker, for good cause. At the end of the Speaker's allotted time, the Chair shall direct the Speaker to wrap up and the Speaker shall not exceed 1 additional minute of speaking time.
- F. Council shall not respond to Speakers

## 8. QUORUM

Four (4) members of the Council, one of whom may be the Mayor, shall constitute a quorum for conducting business, unless otherwise prescribed by law. A quorum for conducting business can be achieved with the presence of the Mayor and three (3) councilmembers; or, in the absence of the Mayor, four (4) councilmembers.

## 9. VOTING

- A. Unless otherwise provided by City Charter, law or ordinance, the affirmative vote of the majority of those councilmembers present shall be necessary to adopt any item on an agenda.
- B. It is the duty of each councilmember who has an opinion on an item presented for consideration and vote to express it by a vote to approve or deny the



item. It is recognized that parliamentary procedure affords members of the City Council the right to abstain from voting on an item instead of voting to approve or deny the item. To maintain public transparency, any councilmember abstaining from a vote on an item shall state the purpose for the abstention which shall be entered into the City's official record.

- C. If any councilmember abstains without a cause, the vote will be recorded as a nay vote.
- D. Any councilmember who abstains from voting due to a conflict of interest shall recuse themselves and leave the room during the discussion and vote on the matter.

## **10. DEBATE AND DECORUM**

Robert's Rules of Order Newly Revised shall, to the extent feasible, govern the proceedings of Council. The City Attorney shall act as Parliamentarian for Council meetings.

# **CODE OF ETHICS**

## **City of Tomball**

### **1. ETHICAL STANDARDS**

It is the official policy of the City that:

- A. City officials shall be independent, impartial, and responsible to the citizens of the City;
- B. City officials shall not have a financial interest, and shall not engage in any business, transaction, or professional activity, or incur any obligation that conflicts with the proper discharge of their duties for the city in the public interest;
- C. The principles of personal conduct and ethical behavior that should guide the behavior of city officials include:
  - 1. A commitment to the public welfare
  - 2. Respect for the value and dignity of all individuals;
  - 3. Accountability to the citizens of the city;
  - 4. Truthfulness; and
  - 5. Fairness.
- D. Under such principles of conduct and ethical behavior, City officials should:
  - 1. Conduct business with integrity and in a manner that merits the trust and support of the public;
  - 2. Be responsible stewards of the taxpayers' resources; and
  - 3. Take no official actions that would result in personal benefit in conflict with the best interests of the city.
- E. To implement the purpose and principles described herein, the Council has enacted rules of ethical conduct to govern city officials

F. In order to adopt standards of disclosure and transparency in government, and to promote public trust in government, the City Council adopts the following guidelines regarding public disclosure of information related to Councilmember compliance with state and local law:

1. The City shall maintain a City Council Public Disclosure Webpage ("Public Disclosure Page"), with a direct link, visible from the City's homepage and individual Councilmember bio pages, containing public disclosure information for each City Councilmember; and
2. Each Councilmember Disclosure Page shall include public disclosure of the following information:
  - (a) All campaign finance reports required by state law; and
  - (b) All conflicts or ethical disclosures required by state or local law; and
  - (c) A copy of awarded contracts for which the Councilmember was required, by local or state law, to file a conflicts affidavit and abstain from participation in discussion of and any vote related to the contract.

## **2. GRANT OF SPECIAL CONSIDERATION**

- A. Council members shall not grant special treatment, consideration, or advantage to any individual, business, or group beyond what is available to all. Exceptions specific programs or incentives must be explicitly authorized by the City Council.

## **3. APPEARANCES ON BEHALF OF PRIVATE INTERESTS**

- A. Council members shall not represent or advocate for private interests before and City body (Council, boards, commissions) regarding matters over which they have discretionary authority. They shall also refrain from representing or participating in any litigation involving the City.

## **4. GIFTS**

- A. Council members shall not accept any gift, favor, or benefit that could reasonably influence their official duties or that is offered with the intent to influence or reward their official conduct.

## **5. Use of Confidential Information**

- A. Council members must not disclose or use any confidential information gained through their position to further their personal interests or the interests of others.

## **6. OFFICIAL OPPRESSION**

- A. A City official may not knowingly mistreat, unlawfully arrest, detain, search, seize, dispossess, assess, or place a lien on someone. They also cannot intentionally deny or interfere with a person's rights, privileges, or protections, knowing their actions are unlawful, or subject anyone to sexual harassment. 39.02, Penal Code.

## 7. NEPOTISM

A. City officials may not appoint or vote to appoint a person related to them (within the second degree by affinity or third degree by consanguinity) or to another board member, if the position is paid with public funds. This does not apply if the related person has been continuously employed:

- (1) at least thirty (30) days, if the officer or member is appointed, or
- (2) at least six (6) months, if the officer or member is elected.

## 8. CITY COUNCIL CENSURE

A. Policy: The City Council places value on the characteristics of honesty, integrity, confidentiality, respect, and transparency. In furtherance of these leadership qualities and public accountability, the City Council adopts a censure policy to allow for Council disapproval or criticism of any of its members for actions unbecoming of their position.

B. Grounds: Council members may be subject to censure if they engage in the following:

- (1) conduct found to impugn the character of a member of the public, another Council member, or staff member;
- (2) conduct found to violate the Charter, these Rules, state and local conflicts disclosure laws, and council confidentiality including, but not limited to, the release of confidential information to unauthorized parties without approval of the City Council; or
- (3) conduct found to cause embarrassment or damage to the reputation of the City.

C. Procedure: The following procedural rules shall apply to a censure request:

Any two (2) Councilmembers, including the Mayor, may place a censure request on a regular meeting agenda. The request shall be in writing and shall be filed with the City Secretary no later than noon on the Monday the week before the regular meeting at which it is requested for consideration.

- (1) All Council members shall be provided a copy a censure request on the same day the request is filed with the City Secretary.
- (2) A censure request shall include the name(s) of the alleged offending Council member(s) with a statement of the reasons for the censure.
- (3) All discussion shall be conducted in open session.
- (4) The alleged offending Council member(s) shall be provided an opportunity to respond to the allegations and present evidence in their defense except that City Council may proceed with the censure request in the absence of the alleged offending Council member(s); and
- (5) A two-thirds (2/3) vote of the City Council members present, excluding the Council member that is the subject of the Censure Request, shall be required to approve a censure request.



D. Consequences: If sustained, a censure request shall serve as an official public statement of disapproval or criticism of a Council member(s) conduct subject to the following actions:

- (1) Minutes of the City Council's censure action shall be entered into the public record;
- (2) The official minutes shall be posted on the Council member(s) Public Disclosure Page; and
- (3) The censured Council member(s) may be removed from committee assignments within the city or with intergovernmental agencies.

## **9. USE OF CITY COMPUTERS/TABLETS**

The City shall make computers and/or electronic tablets ("Device") available to Council to be used for City business and City related purposes. Personal use of a City-owned Device is discouraged and should be limited to intended City related uses of the Device. The following rules shall apply to Council members using a City issued Device:

- A. The Device shall contain all associated hardware and software. Council members shall not install hardware or software on a Device without prior approval of the City's Information Technology Department.
- B. The Device will be equipped to allow internet access and e-mail capabilities; however, Council members shall refrain from using such features to communicate with other Council members during Council meetings.
- C. Council members shall have use of the Device during the member's term of office, and such right shall terminate at the same time the member's term of office ends, at which time the Device and all associated equipment shall be returned to the City.
- D. Council members shall be responsible for maintaining the Device in good condition, and to reasonably protect it from theft, loss or damage.
- E. Council Members may not use a Device in connection with election or re-election efforts or campaigning, either for the member or any candidate for public office.
- F. Council members shall not use the Device for any commercial or financial gain, and shall not use the Device to access, store or download inappropriate or obscene material.
- G. Council should recognize that most information contained on a Device is subject to the Texas Public Information Act or other means of discovery and that all public information shall be preserved in accordance with state law.
- H. Council members shall not use the Device in a manner that would violate the terms of the Texas Open Meetings Act or Public Information Act.

## **10. COUNCIL APPROVAL OF INDIVIDUAL COUNCIL MEMBER NON-ROUTINE REQUESTS FOR INFORMATION OR INVESTIGATIONS BY CITY STAFF**

Any Council members' request to the City Manager for the Manager or City staff to create reports or other information, other than routine requests (i.e., requests for existing

information or new research that can be answered under 30 minutes), shall be added to a Council meeting agenda in the manner prescribed under section 6 of these Rules, considered under the **New Business** portion of the meeting, and thereafter considered for authorization to proceed by a majority of the Council.

#### **10. NEW COUNCIL MEMBER ORIENTATION**

Each new Council member shall, upon taking the oath of office, be provided various forms of vital information which shall include, but not be limited to, the following:

- A. City Charter
- B. Comprehensive Plan
- C. Current Budget
- D. Comprehensive Annual Financial Report for the last Fiscal Year
- E. Council rules
- F. Public Information Act and Open Meetings Act Training
- G. Conflicts of Interest Training

Each new member of Council shall be offered an opportunity by the City Manager to tour various City facilities (i.e., City Hall, Police/Fire stations, Park facilities, Public Works facilities, etc.).

#### **11. ACKNOWLEDGMENT**

All City Council members are required to acknowledge receipt and understand this Ethics, Rules and Order of Business Policy by signing the acknowledgment form. By doing so, they commit to upholding its standards of conduct throughout their term in office.

# City Council Meeting

## Agenda Item

### Data Sheet

Meeting Date: April 21, 2025

#### Topic:

Workshop Discussion Only – Approve a services agreement with Roofing Solutions, LLC for Contract Number 2025-10012, City Hall and Police Department Roof Replacement (CSB No, 2025-11), for a total contract amount not-to-exceed \$181,000, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. This expenditure is included in the Fiscal Year 2024-2025 budget.

#### Background:

Staff had a roof inspection completed for the City Hall and Police Department roofs due to repetitive leaks during weather events. It was the recommendation of the roofing specialist to have the roof replaced by providing a completely new adhered thermoplastic polyolefin (TPO) membrane roofing system.

Staff developed a scope of work to be performed that would ensure the roof would remain watertight and resist specified wind uplift pressures and exposure to all weather conditions without failure. IN addition, the City required a 20-year no-dollar-limit warranty for the TPO.

To obtain the most favorable pricing and in accordance with the City's Procurement Policy, sealed bids were solicited for the roof replacement, with information available by request from the City. A total of 18 contractors requested the specifications, and the City received five (5) bids, and after a thorough review it was determined that Roofing Solutions was the lowest responsive bidder for a total base bid of \$181,000. The awarded services agreement will include the base bid only with no additive work.

City Hall & Police Department Roof Replacement	
Submitted Bids	
Company	Total Bid
Roofing Solutions, LLC	\$181,000.00
Parich Roofing Construction	\$190,000.00
JJ Red Commercial Roofing, LLC	\$356,518.00
Interstate Restoration, LLC	\$412,013.29
STX Buildcon	\$528,000.00
Total Allocated Budget: \$210,000	

This item approves a services agreement with Roofing Solutions, LLC for Contract Number 2025-10012, City Hall and Police Department Roof Replacement (CSB No, 2025-11), for a total contract amount not-to-exceed \$181,000.

**Origination:** Project Management

**Recommendation:**

Staff recommends approving a services agreement with Roofing Solutions, LLC for Contract Number 2025-10012, City Hall and Police Department Roof Replacement (CSB No, 2025-11), for a total contract amount not-to-exceed \$181,000.

**Party(ies) responsible for placing this item on agenda:** Meagan Mageo, Project Manager

**FUNDING (IF APPLICABLE)**

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: #400-614-6409

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed	<u>Meagan Mageo</u>	Approved by	_____
	Staff Member		City Manager
	Date		Date

Bid 2025-11 Roof Replacement - City Hall/Police Department		Bidder No. 1	Bidder No. 2	Bidder No. 3	Bidder No. 4	Bidder No. 5
Base Price Table		Roofing Solutions LLC	Parich Roofing Construction	Interstate Restoration, LLC	JJ Red Commercial Roofing, LLC	STX Buildcon
Item	Description					
1	Remove the existing coping cap and dispose of in supplied dumpster	\$5,360.00	\$7,500.00	\$15,550.00	\$3,850.00	\$20,500.00
2	Rework primary drainage locations to allow for 1/2" per foot sump	\$1,890.00	\$2,750.00	\$5,123.29	\$6,600.00	\$23,750.00
3	Installation of 1/2" HD cover board insulation over entire roof surface	\$54,250.00	\$15,000.00	\$51,383.59	\$16,000.00	\$55,000.00
4	Installation of Fully-adhered 60mil TPO membrane over installed insulation. Heat weld all sides and end laps.	\$86,800.00	\$56,700.00	\$275,211.92	\$178,000.00	\$155,000.00
5	adhesive, along perimeter parapet walls and curb mouted roof equipment	\$13,890.00	\$40,000.00	-	\$48,618.00	\$22,000.00
6	Installation of new TPO T-Joint patches along membrane intersections	\$520.00	\$3,000.00	-	\$600.00	\$20,000.00
7	Installation of new TPO universal corners to all inside and outside corner details	\$520.00	\$3,500.00	-	\$1,200.00	\$20,000.00
8	Installation of new TPO cut edge sealant to all cut non-factory membrane edges	\$520.00	\$3,000.00	-	\$850.00	\$25,000.00
9	Installation fo new TPO membrane pipe boots to all pipe penetrations	\$1,480.00	\$3,000.00	-	\$1,500.00	\$30,000.00
10	Instllation of new TPO retrofit roof drain assemblies at existing roof drain details	\$1,835.00	\$10,000.00	-	\$4,500.00	\$30,000.00
11	Fabricare and install new 24-gauge pre-finished steel coping, clip and cover-plates to the perimeter parapet walls	\$6,600.00	\$25,000.00	\$19,890.41	\$68,300.00	\$41,000.00
12	Fabricate and install new metal counter-flashing to teminated TPO base flashing details.	\$1,205.00	\$7,800.00	\$17,419.18	\$8,500.00	\$25,000.00
13	Installation of new TPO walk pads around existing curb mounted HVAC equiptment, exhaust ventilator and roof access ladder landing	\$1,610.00	\$2,000.00	\$9,116.44	\$2,500.00	\$20,000.00
14	Clean-up and disposal of all roofing related debris.	\$720.00	\$1,750.00	\$5,479.45	\$3,500.00	\$20,000.00
15	Cost for required Bonds (Performance Bond, Payment Bond, Maintenance Bond)	\$1,830.00	\$5,000.00	\$12,839.01	\$6,500.00	\$15,750.00
16	Cost for 20-year NDL warranty (for TPO)	\$1,970.00	\$4,000.00	-	\$5,500.00	\$5,000.00
18	<b>Total Bid</b>	<b>\$181,000.00</b>	<b>\$190,000.00</b>	<b>\$412,013.29</b>	<b>\$356,518.00</b>	<b>\$528,000.00</b>

City Council Meeting  
Agenda Item  
Data Sheet

Meeting Date: April 21, 2025

Topic:

Workshop Discussion Only – Adopt, on First Reading, Ordinance No. 2025-16, an Ordinance of the City of Tomball, Texas Authorizing and Approving the Calendar Year 2025 Annual Service and Assessment Plan (SAP) Update for the Winfrey Estates Public Improvement District Number 12 (PID 12).

Background:

Approval of this Ordinance will approve the 2025 annual update to the Service and Assessment Plan (SAP) for the Winfrey Estates Public Improvement District Number 12 (PID 12). Under Section 372.013(b) of the Texas Local Government Code, the City Council is required to annually review and potentially update the SAP. Under the 2025 SAP update, which also updates the assessment roll for 2025, the applicable assessment rates of PID 12 are not changing.

The original SAP was adopted by City Council on July 17, 2023 (Ordinance No. 2023-20) and includes a 30-year payment term, and the 2024 Annual Update was adopted on July 15, 2024 (Ordinance No. 2024-22). The 2025 annual installment to be collected from parcels within PID 12 as shown on the assessment roll of the 2025 SAP update with a summary below, due on January 31, 2026.

Improvement Area	Annual Installment (with Admin. Fees)
Improvement Area One	PENDING BOND SALE
Total Assessments: PENDING	

Origination: Project Management

Recommendation:

Staff recommends approving Ordinance 2025-16, 2025 Annual Service and Assessment Plan Update for Winfrey Estates Public Improvement District Number 12 (PID 12).

Party(ies) responsible for placing this item on agenda: Meagan Mageo, Project Manager

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: # \_\_\_\_\_

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed Meagan Mageo  
Staff Member Date

Approved by \_\_\_\_\_  
City Manager Date

**ORDINANCE NO. 2025-16**

**AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS APPROVING  
THE 2025 ANNUAL UPDATE TO THE SERVICE AND ASSESSMENT  
PLAN AND ASSESSMENT ROLL FOR THE WINFREY ESTATES  
PUBLIC IMPROVEMENT DISTRICT INCLUDING THE COLLECTION  
OF THE 2025 ANNUAL INSTALLMENTS.**

\* \* \* \* \*

**WHEREAS**, the City of Tomball, Texas (the “City”) received a petition meeting the requirements of Sec. 372.005 of the Public Improvement District Assessment Act (the “Act”) requesting the creation of a public improvement district over a portion of the area within the corporate limits of the City to be known as the Winfrey Estates Public Improvement District (the “District”); and

**WHEREAS**, the petition contained the signatures of the owners of taxable property representing more than fifty percent of the appraised value of taxable real property liable for assessment within the boundaries of the proposed District, as determined by the then current ad valorem tax rolls of the Harris County Appraisal District and the signatures of property owners who own taxable real property that constitutes more than fifty percent of the area of all taxable property that is liable for assessment by the City; and

**WHEREAS**, the City of Tomball, Texas (the “City”) received a petition meeting the requirements of Sec. 372.005 of the Public Improvement District Assessment Act (the “Act”) requesting the creation of a public improvement district over a portion of the area within the corporate limits of the City to be known as the Winfrey Estates Public Improvement District (the “District”); and

**WHEREAS**, on January 3, 2022, the City Council accepted the Petition and called a public hearing for February 7, 2022, on the creation of the District and the advisability of the improvements; and



**WHEREAS**, notice of the hearing was published in a newspaper of general circulation in the City in which the District is to be located on January 12, 2022; and,

**WHEREAS**, notice to the owners of property within the proposed District was sent by first-class mail to the owners of 100% of the property subject to assessment under the proposed District containing the information required by the Act such that such owners had actual knowledge of the public hearing to be held on February 7, 2022; and

**WHEREAS**, on February 7, 2022, the City Council continued such public hearing on the creation of the District and heard any comments or objection thereto;

**WHEREAS**, the City Council approved the creation of the PID by Resolution approved on April 18, 2022 (the " Creation Resolution") and recorded the Creation Resolution as authorized by the Act; and

**WHEREAS**, pursuant to Sections 372.013, 372.014, and 372.016 of the Act, the City Council has directed the preparation of a Preliminary Service and Assessment Plan for Authorized Improvements within the District (the "Service and Assessment Plan") and an assessment roll for of the District (the "Assessment Roll") that states the assessment against each parcel of land within the District (the "Assessments"); and

**WHEREAS**, the City called a public hearing regarding the proposed levy of Assessments pursuant to the Service and Assessment Plan and the proposed Assessment Roll on property within the District, pursuant to Section 372.016 of the Act; and

**WHEREAS**, the City, pursuant to Section 372.016(b) of the Act, published notice in a newspaper of general circulation within the City to consider the proposed Service and Assessment Plan for the District and the levy of the Assessments, as defined in the Service and Assessment Plan, on property in the District; and

**WHEREAS**, the City Council, pursuant to Section 372.016(c) of the Act caused the mailing of notice of the public hearing to consider the proposed Service and Assessment Plan and the Assessment Roll attached to the Service and Assessment Plan and the levy of Assessments on property in the District to the last known address of the owners of the property liable for the Assessments; and

**WHEREAS**, the City Council convened the public hearing at 6:00 p.m. on the 3rd day of July, 2023, at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Service and Assessment Plan, the Assessment Roll, and the proposed Assessments, and to offer testimony pertinent to any issue presented on the amount of the Assessments, the allocation of the costs of the Authorized Improvements, the purposes of the Assessments, the special benefits of the Assessments, and the penalties and interest on annual installments and on delinquent annual installments of the Assessments; and

**WHEREAS**, the City Council approved an Ordinance levying Assessments on property within the District; and

**WHEREAS**, pursuant to the Act, the Service and Assessment Plan and Assessment Roll is required to be reviewed and updated annually as described in Sections 372.013 and 372.014 of the PID Act; and

**WHEREAS**, the City Council has directed that an update to the Service and Assessment Plan and the Assessment Roll for the District be prepared for 2025 (together, the “2025 Updates”); and

**WHEREAS**, the City Council now desires to proceed with the adoption of this Ordinance approving the 2025 Updates attached thereto, in conformity with the requirements of the PID Act; and

**WHEREAS**, the City Council finds the passage of this Ordinance to be in the best interest for the citizens of Tomball, Texas.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**SECTION 1:** That all matters stated in the preamble are found to be true and correct and are incorporated herein as if copied in their entirety.

**SECTION 2:** That the 2025 Update attached hereto as Exhibit A is hereby approved and accepted as provided.

**SECTION 3:** If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council hereby determines that it would have adopted this Ordinance without the invalid provision.

**SECTION 4:** That this Ordinance shall be cumulative of all other City Ordinances and all other provisions of other Ordinances adopted by the City which are inconsistent with the terms or provisions of this Ordinance are hereby repealed.

**SECTION 5:** It is hereby declared to be the intention of the City Council of the City of Tomball, Texas, that sections, paragraphs, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared legally invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such legal invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance since the same would have been enacted by the City Council of the City of Tomball without the incorporation in this Ordinance of any such legally invalid or unconstitutional, phrase, sentence, paragraph or section.

**SECTION 6:** This ordinance shall take effect immediately from and after its passage as the law in such case provides.

FIRST READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 5<sup>TH</sup> DAY OF MAY 2025.

COUNCILMAN FORD	_____
COUNCILMAN GARCIA	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN COVINGTON	_____
COUNCILMAN PARR	_____

SECOND READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL, HELD ON THE 19TH DAY OF MAY 2025.

COUNCILMAN FORD	_____
COUNCILMAN GARCIA	_____
COUNCILMAN DUNAGIN	_____
COUNCILMAN COVINGTON	_____
COUNCILMAN PARR	_____

\_\_\_\_\_  
Lori Klein Quinn, Mayor  
City of Tomball

ATTEST:

\_\_\_\_\_  
Shannon Bennett, Assistant City Secretary

City Council Meeting  
Agenda Item  
Data Sheet

Meeting Date: April 21, 2025

Topic:

Workshop Discussion Only – Approve Supplemental Number One, amending the Professional Services Agreement with Freese & Nichols, Inc. for Project Number 2023-10019, Baker Drive Water Plant project, for a net decrease of \$22,827, for a total contract amount not-to-exceed \$1,826,260, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. This expenditure is included in the Fiscal Year 2024-2025 Capital Improvement Budget.

Background:

The completed Water Master Plan identified recommendations for projects needed to address the required capacity for the current demand and future growth including the recommendation to add an additional groundwater well site. The existing site on Baker Drive, where the Baker Drive Elevated Storage Tank (EST) was located, was identified as the location for the additional groundwater well site. In August 2023, the City entered into a professional services agreement with Freese & Nichols, Inc. to complete the design and oversee construction of the Baker Street Water Plant project.

The professional services agreement with Freese & Nichols, Inc. (FNI) included a scope of work to complete the design and oversee construction of the project to include demolition and plugging of the existing groundwater well, construction of a new pump station, electrical building, groundwater well and ground storage tank, for a not-to-exceed amount of \$1,849,087. Supplemental number one to the professional services agreement decreases the not-to-exceed amount by \$22,827, and changes the following tasks:

- 1. Resident Project Representation – (\$51,577)
  - a. Construction management for construction phase.
- 2. Construction Material Testing – \$28,750
  - a. Coordination of material testing laboratory for the testing of compacted soils and concrete.

The proposed supplemental decreases the total contract amount by \$22,827, for a not-to-exceed contract amount of \$1,826,260. This project was included in the FY 2024-2025 Capital Improvement Budget as an on-going capital project as part of the Certificate of Obligation issuance.

Baker Drive Water Plant Project Budget Breakdown		
Project Element	Total Contract	Remaining Contract
Engineering – Freese & Nicols*	\$1,826,260	\$838,067.33
Construction – IECONI	\$8,848,597.05	\$8,377,430.20
Project Budget \$10,674,857.05	Total Contracts \$10,674,857.05	Remaining Funding \$0

\*After Amendment One decrease of \$22,827

This item approves supplemental number one with Freese & Nichols, Inc. amending the professional services agreement for a net decrease of \$22,827, for a total contract amount not-to-exceed \$1,826,260.

**Origination:** Project Management

**Recommendation:**

Staff recommends approving supplemental number one with Freese & Nichols, Inc. amending the professional services agreement for a net decrease of \$22,827, for a total contract amount not-to-exceed \$1,826,260.

**Party(ies) responsible for placing this item on agenda:** Meagan Mageo, Project Manager

**FUNDING (IF APPLICABLE)**

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: #400-613-6409

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed	<u>Meagan Mageo</u>	Approved by	_____
	Staff Member		City Manager
	Date		Date

**SUPPLEMENTAL NO. 1  
PROFESSIONAL SERVICES AGREEMENT  
FOR  
ENGINEERING SERVICES  
RELATED TO  
PROJECT NO. 2023-10019  
CITY OF TOMBALL  
BAKER DRIVE WATER PLANT**

**THE STATE OF TEXAS           §  
   §  
COUNTY OF HARRIS         §**

THIS IS A SUPPLEMENTAL AGREEMENT amending an AGREEMENT between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and Freese & Nichols, Inc. ("Engineer"), executed the \_\_\_\_ day of April 2025, relative to the addition of work for the following tasks:

- 1. Resident Project Representation – (\$51,577)**
  - a. Reduction in construction management efforts.
- 2. Construction Material Testing - \$28,750 (not-to-exceed)**
  - a. Coordination of material testing laboratory for the testing of compacted soils and concrete.

**WITNESSETH:**

WHEREAS, the City desires to execute a supplemental amendment to the Professional Services Agreement for services related to the Baker Drive Water Plant (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to project planning and design, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional engineering;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

## **SECTION I. SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional services as outlined and defined in the Proposal attached hereto as Exhibit A, and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Engineer compensation as stated in the Section VII.

## **SECTION II. CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent engineering practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

## **SECTION III. OWNERSHIP OF WORK PRODUCT**

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same. It is further understood and agreed that ownership and usage rights associated with the above referenced documents and analyses, hereinafter referred to as instruments, are contingent upon Engineer's completion of the services which will result in the production of such instruments and Engineer's receipt of payment, in full, for said services. Additionally, City understands and agrees that the rights described and provided hereunder shall not preclude or prevent Engineer from continuing to use those processes, analyses and data.

## **SECTION IV. TIME FOR PERFORMANCE**

The time for performance is an estimated 1,200 calendar day duration beginning from the execution date of this Agreement. Upon written request of the Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.



**SECTION V.  
COMPLIANCE AND STANDARDS**

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

**SECTION VI.  
INDEMNIFICATION**

**To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.**

**SECTION VII.  
ENGINEER'S COMPENSATION**

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed **\$(22,827)**, including reimbursable expenses as identified in Exhibit "A", for a total contract amount not to exceed **\$1,826,260**.

**SECTION VIII.  
INSURANCE**

Engineer shall procure and maintain insurance for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness, disease, or death, claims or damages because of injury to or destruction of property, including loss of use resulting therefrom, and claims of errors and omissions.

## **SECTION IX. TERMINATION**

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer 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 the charges as have been previously made. Copies of all completed or partially completed maps, studies, reports, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

## **SECTION X. ADDRESSES, NOTICES AND COMMUNICATIONS**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Consultant at the following address:

Freese & Nichols, Inc  
Attention: Richard Weatherly  
11200 Broadway Street, Suite 2320  
Pearland, Texas 77584

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball  
Attn: Project Manager  
501 James Street  
Tomball, Texas 77375

## **SECTION XI. LIMIT OF APPROPRIATION**

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

**SECTION XII.  
SUCCESSORS AND ASSIGNS**

The City and Engineer 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. Neither the City nor Engineer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**SECTION XIII.  
DISCLOSURE OF INFORMATION**

Engineer shall under no circumstances release any material or information developed in the performance of its services hereunder without the express written permission of the City.

**SECTION XIV.  
MODIFICATIONS**

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

**SECTION XV.  
ADDITIONAL SERVICES OF ENGINEER**

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Exhibit "A". These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Exhibit "A," up to the amount authorized in writing by the City.

**SECTION XVI.  
CONFLICTS OF INTEREST**

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Consultant shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

**SECTION XVII.  
PAYMENT TO ENGINEER FOR SERVICES AND  
REIMBURSABLE EXPENSES**

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

**XVIII.  
MISCELLANEOUS PROVISIONS**

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence or performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Engineer further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

E. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Engineer is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

F. In accordance with Chapter 2274 of the Texas Government Code, Engineer covenants that it: (1) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this contract against a firearm entity or firearm trade associations.

IN WITNESS WHEREOF, the City of Tomball, Texas, has lawfully caused this Agreement to be executed by its Mayor; and Engineer, acting by its duly authorized officer/representative does now sign, execute and deliver this instrument.

EXECUTED on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Company Name: Freese & Nichols, Inc.**

Richard Weatherly

Name: Richard Weatherly, PE

Title: Vice President

**CITY OF TOMBALL, TEXAS**

David Esquivel, City Manager

ATTEST:

Shannon Bennett, Assistant City Secretary

# EXHIBIT A



CITY OF TOMBALL, TX

501 James Street

Tomball, Texas 77375

## PROFESSIONAL SERVICES AGREEMENT

### AMENDMENT #1

FNI Project: TMB23728

Client Contract: 2023-10019

Date: 3/31/2025

**Project Name:** Baker Dr Water Plant  
Adjustment of Construction Management and Resident Project Representation. Addition of Construction Materials Testing to be provided by UES

**Description of Services:** There is a reduction in construction management effort in the amount of \$51,577. Conversely, there is an additional cost for the construction material testing in the amount of \$28,750. The net reduction in the overall cost of the project is \$22,827.  
(Attached is amended Scope of Work)

**Deliverables:** N/A

**Schedule:** Construction schedule is increased by one month to 16 months

**Compensation Type:** Not to Exceed Fee

**Current Contract Amount:** \$1,849,087

**Amount of this Amendment:** (\$22,827)

**Revised Total Amount Authorized:** \$1,826,260

*The services described above shall proceed as amended upon execution of this Amendment. All other provisions, terms, and conditions of the Professional Services Agreement which are not expressly amended shall remain in full force and effect.*

CITY OF TOMBALL, TX

FREESE AND NICHOLS, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: David Esquivel

Name: Jason Ward

Title: City Manager

Title: Vice President

Date: \_\_\_\_\_

Date: 4/1/2025

**SCOPE OF SERVICES AND RESPONSIBILITIES OF CITY  
BAKER DR FINAL DESIGN AMENDMENT 1  
MARCH 31, 2025**

PROJECT UNDERSTANDING

Tomball completed an update of their Water Master Plan in 2018. The master plan identified improvement needs in the City's water distribution system that that will help the City serve anticipated future water demands. These improvement recommendations include construction of a new water plant (East Water Plant) in addition to another water groundwater well site to complement the required capacity. An existing site on Baker Dr. has been identified for the water well site. The infrastructure existent at Baker Dr. has not been used for 9 years. Demolition and plugging of the existing groundwater well will be performed as part of this project. It will also include construction of a new pump station, electrical building, groundwater well, and ground storage tank.

Assumptions

- The construction package will include work for the following facilities:
  - A new open-air 1,000 gpm pump station
  - Pre-cast concrete electrical building
  - 0.5 MG ground storage tank
  - Groundwater well.
- The project will include preliminary and final design.
- A capacity evaluation study will be prepared for the ground water well and pump station with GST tank.
- A preliminary design report (PDR) will be prepared for the pump station improvements.
- The PDR will include alternatives for the pump station layout, ground storage tank, pump types, and electrical equipment.
- Final Design will include all required environmental, drainage, civil, architectural, structural, electrical and hydraulic design.
- The site will require yard piping, landscaping screening, grading, driveway, fencing, drainage, lighting and irrigation.
- Based on previous experience from the existing well at Baked Dr, there could be water quality challenges to be addressed. FNI will present several mixing system options during the design phase and will assume selection of one of these is included in the design.
- Overflow from the ground tank will be routed to drain away from proposed development and drainage design as needed.
- A stand-by generator will be included in the design and will be diesel driven.
- The project will use a design-bid-build delivery method.
- The construction project will be bid as a single construction package.
- *The project will include Materials Testing per the proposal provided in special services by the subcontractor UES*

The project tasks are broken down in **Table 1**:

**Table 1: Baker Dr Water Plant Tasks**

Task	Task Description
<b>Basic Services</b>	
A	Project Management
B	Preliminary Design
C	Final Design Phase
D	Bid Phase
E	Construction General Representation
<b>Special Services</b>	
F	Resident Project Representation
G	Topographic Survey
H	Geotechnical Investigation
I	Groundwater Consulting Services
J	Environmental Review and Permitting
K	Construction Materials Testing

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

**TASK A: PROJECT MANAGEMENT**

Consultant shall provide project management services for the project. The following services shall be provided:

**A1. Project Kickoff Meeting (internal)**

No Change.

**A2. Project Kickoff Meeting**

No change.

**A3. Monthly Progress Meetings (internal)**

No change.

**A4. Monthly Progress Meetings**

No change.

**A5. City Council Presentations**



*City of Tomball*  
*Baker Drive Project Amendment 1*  
*Scope of Work*  
No change.

**A6. Project Schedule**

No change.

**A7. Monthly Project One Page Reports**

No change.

**A8. Contract Operations**

No change.

**A9. Contract Preparation**

No change

**A10. Project Close Out**

No change.

**A11. Quality Management**

No change.

**TASK B: PRELIMINARY DESIGN 1,000 GPM PS:**

FNI shall provide professional services in this phase as follows:

**B1. Review of Well Evaluation Report**

No change.

**B2. Hydraulic Analysis**

No change.

**B3. Storage Tank**

No change.

**B4. Pump Station System Curves**

No change.

**B5. Pump Evaluation and Selection**

No change.

**B6. Well Pumping Capacity**

No change.

**B7. Preliminary Site Plans, Floor Plans, and Sections**

*City of Tomball*  
*Baker Drive Project Amendment 1*  
*Scope of Work*  
No change.

**B8. Chemical Process Layout**

No change.

**B9. Coordinate with Electric Utility**

No change.

**B10. Draft Preliminary Design Report**

No change.

**B11. Review Meeting with the City Staff**

No change.

**B12. Final Preliminary Design Report**

No change.

**TASK C: FINAL DESIGN 1,000 GPM PS :**

FNI shall provide professional services in this phase as follows:

**C1. 60% Final Design**

No change.

**C2. 90% Final Design**

No change.

**C3. 100% Final Design**

No change.

**TASK D: BID PHASE**

Upon completion of the design services and approval of "Final" drawings and specifications by City, Consultant will proceed with the performance of services in this phase as follows:

**D1. Prepare Bid Documents**

No change.

**D2. Distribute Bid Documents**

No change.

**D3. Maintain Distributed Bid Documents**

*City of Tomball*  
*Baker Drive Project Amendment 1*  
*Scope of Work*  
No change.

**D4. Issue Addenda and Respond to Questions**

No change.

**D5. Pre-bid Conference**

No change.

**D6. Bid Tabulation and Award Recommendation**

No change.

**D7. Conformed Contract Documents**

No change.

**D8. Issue of Documents and Notice to Proceed to Contractor**

No change.

**TASK E: CONSTRUCTION GENERAL REPRESENTATION**

No change.

**E1. Pre-Construction Conference**

No change.

**E2. Construction Communication Plan**

No change.

**E3. Construction Documents Review**

No change.

**E4. Pay Request Review**

No change.

**E5. Monthly Site Visits**

No change.

**E6. Non-Conforming Work Notification**

No change.

**E7. Construction Documents Interpretation**

No change.

**E8. Management of Change**

No change.

**E9. Management of Change**

No change.

**E10. Pump Station Start Up**

No change.

**E11. Final Walk Thru**

No change.

**E12. Record Drawings**

No change.

**SPECIAL SERVICES:** FNI shall render the following special services once they have been authorized by the City

**TASK F: CONSTRUCTION MANAGEMENT AND INSPECTION**

The Consultant will have a Resident Project Representative (RPR) on the Site. The duties, responsibilities, and the limitations of authority of the RPR, and designated assistants, are as follows:

**F1. CONSTRUCTION MANAGEMENT GENERAL ASSUMPTIONS**

No change.

**F2. CONSTRUCTION MANAGER AND RESIDENT PROJECT REPRESENTATIVE ASSIGNMENTS**

Provide the services of an on-site Construction Inspector / RPR acceptable to the City. FNI will provide a level of service based on the duration and schedule of the project as outlined in the fee spreadsheet. The Consultant will provide a half-time inspector and a part-time construction manager. The inspector will cover the pump station project over the expected construction duration of 16 months. He is expected to work an average of 20 hours per week. The CM will average two trips to the site a week for the duration of the work, expected to be 16 months.

**F3. DUTIES AND RESPONSIBILITIES OF THE RPR**

No change.

**TASK G: TOPOGRAPHIC SURVEY**

Upon written notice to proceed, Consultant shall retain (as a subconsultant) and monitor the services of a surveying firm to perform surveying services for the project. The following survey shall be provided.

**G1. TOPOGRAPHIC SURVEY**

*City of Tomball*  
*Baker Drive Project Amendment 1*  
*Scope of Work*  
No change.

**G2. DIG TESS CALL**

No change.

**TASK H: GEOTECHNICAL INVESTIGATION**

Consultant will render the following geotechnical engineering professional services in connection with the project consisting of field exploration, laboratory testing, engineering analysis, and reporting.

**H1. FIELD EXPLORATION**

No change.

**H2. LABORATORY TESTING**

No change

**H3. WATER PLANT GEOTECHNICAL DESIGN REPORT**

No change.

**H4. GROUND STORAGE TANK GEOTECHNICAL DESIGN REPORT**

No change

**TASK I: WELL CONSULTING SERVICES – Provided by AGS AND ALSAY**

The Report including the following\*

**I1. WELL CONSTRUCTION PARAMETERS**

No change.

**I2. POLLUTION HAZARDS STUDY AND REPORT**

No change.

**I3. WELL AND PUMP SPECIFICATIONS REVIEW**

No change.

**I4. NEW WELL CONSTRUCTION AND FIELD SERVICES**

No change.

**I5. LABORATORY SERVICES**

No change

**I6. EXISTING WELL INSPECTION AND FIELD SERVICES**

*City of Tomball*  
*Baker Drive Project Amendment 1*  
*Scope of Work*  
No change.

**TASK J: ENVIRONMENTAL REVIEW**

Consultant will render the following professional environmental services in connection with the project.

**J1. HAZARDOUS MATERIALS REVIEW**

No change.

**J2. PRECONSTRUCTION NOTIFICATION**

No change.

**J3. SECTION 404 MITIGATION PLAN**

No change.

**TASK K: CONSTRUCTION MATERIALS TESTING provided by UES**

Consultant will coordinate with the material testing laboratory (UES) the testing of compacted soils and concrete based on the proposal attached to this amendment in a total cost not to exceed \$25,000.

**Summary of Meetings**

- No change

**List of Deliverables**

- No change

**Summary of Project Schedule**

- No change

**SUMMARY OF FEE FOR ENGINEERING SERVICES**

FNI proposes to perform the basic and special services outlined in the above sections for a total **lump sum fee of \$1,082,647**, and **not-to-exceed fee of \$743,613**, for a **total project cost of \$1,826,260**, as shown in **Table 2**.

**Table 2: Summary of Fee for Basic and Special Services**

Basic Services Tasks			
Description	Current	Amend	Proposed
Task A: Project Management	\$105,100	\$0	\$105,100
Task B: Preliminary Design	\$174,751	\$0	\$174,751
Task C: Final Design Phase	\$523,953	\$0	\$523,953
Task D: Bid Phase	\$40,091	\$0	\$40,091
Task E: Construction Phase General Rep.	\$238,752	\$0	\$238,752
<b>Basic Services Subtotal (Lump Sum)</b>	<b>\$1,082,647</b>	<b>\$0</b>	<b>\$1,082,647</b>
Special Services Tasks			
Description	CPM Fee		
Task F: Resident Project Representation	\$602,830*	(\$51,577)	\$551,253
Task G: Topographic Survey (Gorrrondona)	\$9,693	\$0	\$9,693
Task H: Geotechnical Investigation (Ninyo & Moore)	\$30,239	\$0	\$30,239
Task I: Groundwater Consulting Services (AGS/ALSAY)	\$120,010	\$0	\$120,010
Task J: Environmental Review	\$3,668	\$0	\$3,668
Task K: Construction Material Testing (UES)	\$0	\$28,750	\$28,750
<b>Special Services Subtotal (CPM)</b>	<b>\$766,440</b>	<b>(\$22,827)</b>	<b>\$743,613</b>
<b>Project Total (Basic + Special Services)</b>	<b>\$1,849,087</b>	<b>(\$22,827)</b>	<b>\$1,826,260</b>

\* There is a difference of 1 dollar in the amount on the signed contract. The signed contract amount is \$602,831



Mr. Carlos Quintero  
Freese and Nichols, Inc.  
10497 Town and Country Way, Suite 600  
Houston, TX 77024

February 14, 2025

Re: UES Proposal No. 110670  
Construction Materials Testing  
Baker Drive Water Plant (LOA)  
Tomball, TX

Dear Mr. Quintero:

UES Professional Solutions 44, LLC (UES), is pleased to submit this proposal for providing Construction Materials Testing (CMT) and related quality control services for the referenced project.

UES has integrated the resources of Alpha Testing, Riner Engineering, Rock Engineering and Testing and In-Control Technologies to form the largest geotechnical engineering, materials testing, special inspection and environmental services firm in the Texas Gulf Coast region. Our personnel and equipment resources are unmatched and we have the experienced staff to perform the necessary CMT services in accordance with the project requirements. In the Houston area, UES is accredited by the American Association for Laboratory Accreditation (A2LA) and meets the requirements of ASTM E329. We also participate in Cement and Concrete Reference Laboratory (CCRL) and AASHTO re:source proficiency sampling programs.

For the purpose of this proposal, we have estimated quantities and tests per our experience, with the information provided. The actual costs for CMT services can decrease or increase with changes in the scope of work and are heavily dependent on the contractor's work methods, production, and sequencing. This is only an estimate for budgetary purposes and UES's total fee will be based on the actual amount of time and laboratory testing required for the project. These services will be performed on a unit price basis in accordance with the attached Schedule of Services and Fees. UES is willing to re-evaluate our budget once a formal construction schedule is finalized.

UES utilizes a proprietary electronic laboratory data management and report generation system. CMT reports prepared in Adobe PDF format are emailed to the Client and their designees. Report turnaround time is typically one day. UES also provides an extranet where CMT reports can be accessed by the Client at any time. CMT reports are automatically posted to our extranet when they are emailed. Our system is designed to provide high quality, real-time information.

By execution of this proposal, the undersigned Client acknowledges and agrees that the document entitled "Terms and Conditions" has been provided or made available to Client and Client agrees that such Terms and Conditions shall be applied to the present Proposal and shall be fully binding upon Client. The Terms and Conditions are fully incorporated into this Proposal by reference as if set forth at length.



## FIRM PROFILE

UES is a registered Texas engineering firm (#813) and a Texas geoscience firm (#50341), meets the requirements of ASTM E-329, is AASHTO R-18 accredited, and has engineers licensed in multiple states. UES currently employs over 275 people.

UES recognizes that our client base faces challenges at every turn, either meeting a deadline, meeting a budget, or overcoming a field or design challenge. It is our internal challenge to make your challenges ours. Tell us what you need, we will take ownership, ask the needed questions, then be responsive in execution.

### BUSINESS LOCATIONS

#### Austin

2324 Ridgepoint Drive, Suite E  
Austin, Texas 78754  
Phone: 281-469-3347

#### Corpus Christi

6817 Leopard Street  
Corpus Christi, TX, 78409  
Phone: 361-883-4555

#### Dallas

2209 Wisconsin Street  
Dallas, TX 75229  
Phone: 972-620-8911

#### Fort Worth

5058 Brush Creek Road  
Fort Worth, TX 76119  
Phone: 817-496-5600

#### Houston – East

4667 Kennedy Commerce Drive  
Houston, Texas 77032  
Phone: 281-469-3347

#### Houston – North

14731 Pebble Bend Dr  
Houston, Texas, 77068  
Phone: 281-580-8892

#### Houston – West

15811 Tuckerton Road  
Houston, TX 77095  
Phone: 713-360-0460

#### Rio Grande Valley

11818 West Business Hwy 83, Unit 1  
La Feria, TX 78559  
Phone: 956-201-4797

#### Round Rock

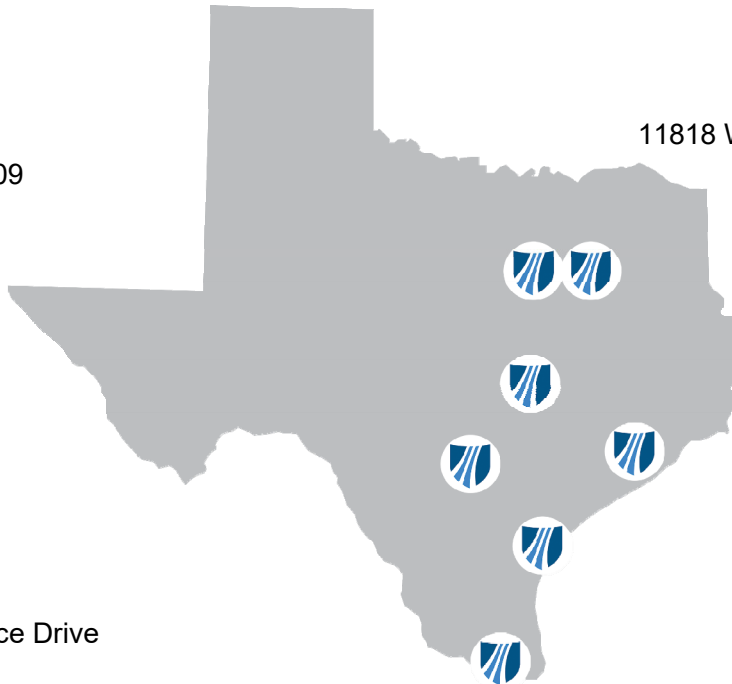
7 Roundville Lane  
Round Rock, TX, 78664  
Phone: 512-284-8022

#### San Antonio – East

4740 Perrin Creek, Suite 480  
San Antonio, TX 78217  
Phone: 210-249-2100

#### San Antonio – West

10856 Vandale Street  
San Antonio, TX, 78216  
Phone: 210-495-8000



### Quality Control

All testing equipment in UES's laboratories is calibrated on an annual basis using traceable standards (NIST or NISTL). Calibrations are confirmed by CCRL and AASHTO on a bi-annual basis during third-party inspections. Along with calibration of equipment, UES also maintains an internal QA/QC program to assure consistent and reliable test results. This program pertains to methodologies for performing tests that have been developed and expanded through years of experience.

We appreciate the opportunity to submit this proposal for CMT services and look forward to working with you during the construction phase of this project. If there are any questions concerning this proposal or if we can be of further assistance, please contact us at your convenience.

Respectfully submitted,

**UES**



Leah Martinez  
Project Estimating Manager

**CLIENT APPROVAL**

**ESTIMATED BUDGET: \$25,000.00**

Consultant offers the CLIENT the Proposal as described above. CLIENT may accept Consultant's offer by signing in the space provided below and returning a signed copy to Consultant. Such notification may be given by fax or by returning the original proposal. In the event the CLIENT authorizes work without returning a signed copy, the CLIENT agrees to be bound by the terms and conditions as stated herein. The proposal described above has been read, understood, and accepted by CLIENT effective as of the date that the executed proposal is returned to Consultant.

**EXECUTED BY CLIENT'S AUTHORIZED REPRESENTATIVE:** \_\_\_\_\_  
(signature)

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date Accepted: \_\_\_\_\_

CLIENT Business Name: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**ACCOUNTS PAYABLE INFORMATION**

A/P Contact Name: \_\_\_\_\_ A/P Contact Telephone: \_\_\_\_\_

\*A/P Contact Email: \_\_\_\_\_

*\*A/P Contact Email must be provided before UES can proceed with its proposed services*

**REPORT DISTRUBUTION**

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

**UES**  
Construction Materials Engineering and Testing  
Basic Services and Cost Estimate  
Project Name: Baker Drive Water Plant (LOA); Tomball, TX

DESCRIPTION	Estimated Quantity	Unit Rate	Estimated Total
<b>CMT Testing</b>			
Not to exceed budget based on attached fee schedule	1	\$25,000.00	\$25,000.00
			<b>\$25,000.00</b>

**UES**  
Construction Materials Engineering and Testing  
Standard Unit Rates  
Project Name: Baker Drive Water Plant (LOA); Tomball, TX

<b>DESCRIPTION</b>	<b>UNIT RATE</b>
<b><u>EARTHWORK</u></b>	
Engineering Technician services performing in-place field density testing (per hour)	\$58.00
Engineering Technician services for sample pick-up (per hour)	\$58.00
Overtime (in excess of 8 hours per day) (per hour)	\$87.00
Vehicle Trip Charge (per trip)	\$100.00
Nuclear Density Equipment Charge (per trip)	\$100.00
Moisture/Density Relationship of Soils	
Standard Proctor (ASTM D 698) (each)	\$250.00
Modified Proctor (ASTM D 1557) (each)	\$250.00
Target Moisture Proctors (per point) (each)	\$120.00
With Lime added in laboratory, add (each)	\$75.00
Atterberg-limit Determinations	
Natural (each)	\$85.00
With Lime, add (each)	\$85.00
No. 200 Sieve Analysis (each)	\$85.00
Free Swell Tests (each)	\$100.00
Lime Series, pH Method (Eades & Grim Method) (each)	\$375.00
Soluble Sulfate (Standard 8 Day turn around, Rush rates quoted upon request) (each)	\$125.00
Compressive Strength of Stabilized Sand (each)	\$60.00
Completion Letter (min)	\$500.00
Moisture Content Tests (each)	\$9.50
Engineering Review (per hour)	\$150.00
<b><u>CONCRETE</u></b>	
Engineering Technician services for molding concrete test specimens, performing slump, rebar & air tests and testing at batch plant (per hour)	\$58.00
Engineering Technician Services Overtime (in excess of 8 hours per day) (per hour)	\$87.00
Specimen pick-up (4 hour minimum) (per hour)	\$58.00
Vehicle Trip Charge (per trip)	\$100.00
Laboratory compression testing and reporting of concrete cylinders (each)	\$22.00
Reserve concrete cylinders not tested (each)	\$22.00
Engineering Review (per hour)	\$150.00

**UES Professional Solutions 44, LLC**  
**GENERAL CONDITIONS – TEXAS**

**SECTION 1: SCOPE OF SERVICES**

1.1 UES Professional Solutions 44, LLC (“UES”) will provide to Client the professional services described under the Scope of Services (“Services”) in the Professional Services Agreement (“Agreement”) between UES and Client to which these General Conditions form a part.

1.2 UES shall provide revised or additional services, including changes to the Services necessary due to changed or unforeseen conditions, only in accordance with a written Addendum or Change Order (collectively, “Addendum”) to the Agreement agreed to by UES and Client, and only to the extent set forth in that Addendum. Either UES or Client may communicate in writing any requested changes in the nature and scope of the Project; in either case, the changes shall only be executed upon written approval of the Addendum by UES and Client.

1.3 Unless otherwise provided for in the Agreement, the Services will be provided on a standard work schedule of Monday through Friday 8:00 AM to 5:00 PM (excluding holidays), and samples will be analyzed on a standard five (5) to seven (7) business day laboratory turnaround time.

1.4 UES shall not be responsible for any delays, fees or costs associated with adverse or unusual weather conditions that prevent the Services from being safely conducted.

1.5 UES shall provide the personnel, equipment, Level D personal protective equipment (as defined by the Occupational Safety and Health Administration (“OSHA”), and other materials necessary to provide the Services. UES, at its sole discretion, may retain subcontractors or other third-parties to assist it in the provision of the Services.

1.6 Client will provide UES with written authorization to proceed with the Services and any associated fee (e.g., retainer) prior to UES initiating work on the Services.

1.7 The terms “Project” and “Site” are used interchangeably in these General Conditions refer to the land and/or construction project on which or to which UES is to provide Services under this Agreement.

1.8 UES shall perform all Services hereunder as an independent contractor, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant, or employer and employee between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party. UES also agrees not to be treated, or seek to be treated, as an employee of Client for any purpose, including for the purposes of fringe benefits provided by Client, or for disability income, social security taxes and benefits, Federal unemployment compensation taxes, State unemployment insurance benefits and Federal income tax withholding at sources. UES hereby represents that UES has and at all times will maintain timely payments of all taxes due to the Internal Revenue Service and all other government agencies, including withholding and all other taxes.

**SECTION 2: PROFESSIONAL STANDARD OF CARE**

2.1 UES will provide its services under this Agreement in a manner consistent with the level of professional care and skill ordinarily exercised by similar professionals practicing contemporaneously under similar conditions in the locality of the Project. NO OTHER WARRANTY CONCERNING THE SERVICES UES PROVIDES UNDER THE AGREEMENT OR ANY ADDENDUM, EXPRESS OR IMPLIED, IS MADE, AND ALL OTHER WARRANTIES, INCLUDING THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW.

2.2 Client understands that subsurface investigations may involve drilling, boring, excavating or sampling through varied subsurface soil and water strata which, consistent with the prevailing standard of professional care, may result in the unavoidable or inadvertent cross-mingling of soil and water and any Hazardous Substances or constituents contained in them, and that this risk cannot be eliminated despite the exercise of professional care. IF SUCH SUBSURFACE INVESTIGATIONS ARE PART OF THE SERVICES, CLIENT WAIVES ANY CLAIM AGAINST UES, AND SHALL INDEMNIFY, DEFEND, AND HOLD UES HARMLESS FROM ANY CLAIM OR LIABILITY FOR INJURY OR LOSS ARISING FROM CROSS-CONTAMINATION RELATED TO SUCH SUBSURFACE EXPLORATIONS INCLUDING, WITHOUT LIMITATION, ANY CLAIM OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

2.3 UES will take reasonable precautions to minimize damage to the Site, but it is understood by Client that, in the normal course of the provision of the Services, including sampling or drilling, some damage to or alteration of the Site is possible. The repair of such damage shall not be part of the Services unless explicitly specified in writing in the Agreement.

2.4 The Services provided by UES are not intended to be and shall not be construed as providing legal advice, and UES shall not be responsible for Client’s compliance with any applicable laws.

2.5 Client and Client’s personnel and contractors shall promptly inform UES of any actual or suspected defects in UES’s services, to help UES take those prompt and effective measures that in UES’s opinion will help minimize the consequences of any such defect. Client’s payment in full of the amount owed for services rendered shall be taken to mean that Client is satisfied with and has accepted UES’s services.

**SECTION 3: SITE ACCESS, SITE CONDITIONS AND CLIENT RESPONSIBILITIES**

3.1 Client will grant or obtain at its expense lawful and safe access to the Site as needed for UES to perform the Services and will notify all affected persons and entities in writing of UES’s presence. The access shall be adequate to allow UES to conduct the Services, including bringing and storing equipment and tools on the Site and any necessary access to exterior and interior areas. UES shall not be responsible for any delays, fees or costs caused by delayed or restricted access that prevents or slows the delivery of the Services by UES.

3.2 If the Site is not owned or operated by Client or the Client does not otherwise have the authority to grant UES lawful access, Client shall be responsible for obtaining, at its own expense, an access agreement for the Site and shall provide UES a copy of such access agreement at least three business days in advance of the date contemplated for the first Site access related to the Project. UES reserves the right to delay, without penalty, any Site visit and the provision of Services under the Agreement if a site access agreement, in UES’ reasonable judgment and discretion, would impose conditions, liabilities or risks on UES in excess of those set forth in these General Conditions or the Agreement. IF THE SITE IS NOT OWNED BY CLIENT, CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES AND SUCCESSORS (“UES INDEMNITEES”) HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES (INCLUDING ATTORNEY’S FEES) ALLEGED BY THE SITE OWNER OR THE SITE OWNER’S EMPLOYEES, AGENTS, CONTRACTORS OR OTHER PERSONS OR ENTITIES ARISING FROM UES’S PERFORMANCE OF SERVICES UNDER THE AGREEMENT AT SUCH SITE INCLUDING, WITHOUT LIMITATION, ANY CLAIM, LOSS, DAMAGE OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

3.3 Unless otherwise expressly provided for in the Agreement, Client will be responsible for communicating and coordinating with the Site owner(s) with respect to access necessary to the provision of the Services, including security procedures, opening gates, providing access to buildings, avoiding conflicts between provision of the Services and any commercial or manufacturing activities on the Site, and moving vehicles or other equipment that may interfere with the agreed upon Site activities and the Site access necessary to conduct such activities, including opening gates to allow equipment to gain access to proposed work areas, areas to store necessary equipment, as well as access to the interiors of any onsite buildings.

3.4 Client shall be responsible for the safety of the Site where the Project is conducted and for providing a safe environment for UES to provide the Services. UES shall be responsible for the safe and compliant conduct of its personnel at the Site and shall also comply with the reasonable and lawful work rules for the Site. As required by applicable laws, UES will prepare a site-specific Health and Safety Plan (HASP) applicable to its personnel for the Services provided at the Site. UES shall not be responsible for the safety of other personnel at the Site, nor shall it be responsible for ensuring that the Site complies with environmental, health and safety laws, or reporting any unsafe conduct or non-compliance that it may observe. If UES encounters conditions at the Site that are unsafe for its personnel, it reserves the right at its sole discretion to suspend or halt work until such conditions are cured. UES shall not be responsible for any fees, costs or damages associated with any safety-related delays. Unless otherwise provided for in the Agreement, UES shall not work in conditions that require personal protective equipment beyond that classified as Level D by OSHA.

3.5 Client shall inform UES of any reporting or other requirements imposed by any third parties, such as federal, state, or local entities with respect to environmental matters relevant to the Services, Client shall assume responsibility to provide any required notice to any third party, and it shall secure the necessary permits or permissions from any third parties (including governmental authorities) required for UES's provision of the Services. If included in the Agreement, Client may authorize UES to obtain certain permits on Client's behalf, in which case Client shall be responsible for any fees or expenses incurred by UES with respect to obtaining such permits.

3.6 Client shall provide UES with all necessary information to perform its services, including, but not limited to, maps, site plans, reports, surveys, plans and specifications, environmental and hydrogeological investigations and studies, other designs, documents, and any other existing environmental information about the Site. Client assumes all liability for information not provided to UES that could affect the quality or sufficiency of the Services UES provides. If UES encounters undisclosed or unforeseen conditions that may cause material delays or an increase in fees or costs, UES shall inform Client and any changes in schedule, fees or costs shall be addressed in an Addendum. UES shall not be responsible for any delays, fees or costs caused by undisclosed or unforeseen conditions.

3.7 Client is responsible for accurately identifying to UES in writing the existence and location of all subterranean structures and utilities on or affecting the Site (including the type and location of utility lines) and the services to be provided by UES. UES will take reasonable precautions to avoid affecting subterranean structures and utilities disclosed to it in writing by Client. If included in the Agreement, Client may authorize UES to conduct applicable public utility identification and clearance requirements on behalf of Client. CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES INDEMNITEES HARMLESS FOR ANY CLAIMS, LOSSES, DAMAGES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES ARISING FROM DAMAGE DONE TO ANY SUBTERRANEAN STRUCTURES OR UTILITIES, OR FOR THE RELEASE OF ANY HAZARDOUS SUBSTANCES FROM ANY SUCH STRUCTURES OR UTILITIES, THAT ARE NOT ACCURATELY IDENTIFIED AND LOCATED IN WRITING AND DISCLOSED TO UES BY CLIENT BEFORE UES COMMENCES ITS WORK INCLUDING, WITHOUT LIMITATION, ANY CLAIM, LOSS, DAMAGE OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

3.8 Unless otherwise stated in the Agreement, any soil or groundwater monitoring activities that are included in the Services are based on the assumption that soil borings and monitoring wells can be installed using standard truck-mounted drilling equipment, the locations are accessible to such equipment, and that surface conditions at each location consists of non-reinforced asphalt or concrete not exceeding six (6) inches in thickness and no concrete or asphalt cutting will be required. If UES encounters materially different conditions at the Site, UES shall inform Client and an Addendum shall be agreed to that addresses any changes in schedule, fees or costs associated with the changed conditions.

#### SECTION 4: HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CONDITIONS

4.1 Client represents it has informed UES of all known or suspected Hazardous Substances on, under or near the Site of which it is aware, and that it has provided UES with all studies, reports, investigations, or similar documents in its possession about the environmental conditions at the Site, including any documents and correspondence involving Federal, State or local environmental, health or safety regulatory notifications.

4.2 For purposes of the Agreement and these General Conditions, the term "Hazardous Substances" includes materials defined or regulated as hazardous substances, hazardous materials, hazardous wastes, hazardous constituents, solid wastes, pollutants, or toxic substances under any Federal, State or local environmental, health, safety or natural resources law, statute, regulation or ordinance, including but not limited to petroleum products, polychlorinated biphenyls, per- and polyfluoroalkyl substances, asbestos, and any other material or substance listed or identified by the United States Environmental Protection Agency or any similar State or local agency as presenting a potential danger to health, safety or the environment.

4.3 Except to the extent required by law, UES shall not be responsible for making any disclosures to governmental agencies or the Site owner regarding the presence or release of Hazardous Substances on, under, from or around a Site.

4.4 [FOR INVESTIGATION / REMEDIATION PROJECTS] The discovery of Hazardous Substances or other environmental conditions on, under or near the Site not contemplated within the Services may constitute a changed condition, necessitating an Addendum or Change Order. In the event of the discovery of Hazardous Substances or other environmental conditions not contemplated within the Services, Client agrees to compensate UES for all expenses incurred or caused by the discovery, including but not limited to those related to worker protection and exposure, emergency response actions and equipment decontamination.

[FOR GEOTECH PROJECTS ONLY] Client agrees that the discovery of Hazardous Substances or other environmental conditions on, under or near the Site not contemplated within the Services may constitute a changed condition, necessitating an Addendum or Change Order. Although unlikely, Client acknowledges that such a discovery may make it necessary for UES to take immediate measures to protect the health and safety of its employees and other persons, or to arrange for others to do so, including and up to delaying or terminating work. Client agrees to compensate UES for all expenses incurred or caused by the discovery of unanticipated Hazardous Substances or environmental conditions encountered at the Site, including but not limited to those related to worker protection and exposure, emergency response actions and equipment decontamination.

4.5 [FOR INVESTIGATION / REMEDIATION PROJECTS] All substances on, in, or under Client's site, or obtained from Client's site as samples or as byproducts of the sampling process, shall be Client's property. UES shall not be required to sign or certify a waste manifest, disposal ticket, or similar document relating to the transportation or disposal of wastes or Hazardous Substances. UES may serve as Agent for Client if requested under a separate agreement and authorization. Client shall be considered the "generator" of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* and agrees that it shall assume all duties as "generator" of any waste material associated with the Services. Further, Client agrees that UES is not a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances and shall not be so identified on any document.

[FOR GEOTECH PROJECTS] All substances on, in, or under Client's site, or obtained from Client's site as samples or as byproducts of the sampling process, shall be Client's property. Unless otherwise expressly specified in the Agreement or the Services, the characterization, management and disposition of substances, including Hazardous Substances, generated during the Services (including, but not limited to, wastes, samples, produced soils or fluids, cuttings, or protective gear or equipment, etc.) is the sole responsibility of Client. Client shall be considered the "generator" of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* and agrees that it shall assume all duties as "generator" of any waste material associated with the Services. Further, Client agrees that UES is not and shall not be identified as a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances on any document. Unless specifically provided for in the Agreement, UES shall not have any responsibility

with respect to the storage or preservation of samples, and Client agrees that UES is not responsible or liable to Client for any loss of samples that are shipped to a testing facility or retained in storage.

4.6 UES shall not have custody of any monitoring wells or permanent sampling locations installed as part of the Project, and shall not be responsible for proper maintenance, repair, or closure of such wells, unless otherwise provided for in the Agreement.

4.7 CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES (INCLUDING ATTORNEY'S FEES AND CONSULTANTS' FEES, COSTS OF DELAY OF THE SERVICES, AND ANY COSTS ASSOCIATED WITH POSSIBLE REDUCTION TO THE VALUE OF THE PROJECT OR THE SITE IN WHICH IT IS SITUATED) ARISING FROM (I) UES' DISCOVERY OF OR ITS EMPLOYEES' OR SUBCONTRACTORS' EXPOSURE TO HAZARDOUS SUBSTANCES OR SUSPECTED SUBSTANCES RELATED TO THE SERVICES, TO THE EXTENT CAUSED BY CLIENT'S NEGLIGENCE OR WILLFUL MISCONDUCT; (II) ANY DISCLOSURES UES IS REQUIRED TO MAKE BY LAW REGARDING HAZARDOUS SUBSTANCES OR ENVIRONMENTAL CONDITIONS AT A SITE; (III) ANY CLAIMS MADE ALLEGING THAT (A) UES IS AN OWNER OR OPERATOR OF THE SITE AT WHICH THE SERVICES ARE RENDERED; (B) UES IS THE GENERATOR, STORER OR TREATER OF HAZARDOUS SUBSTANCES AT SUCH SITE; OR (C) THAT UES ARRANGED FOR THE TRANSPORTATION OR DISPOSAL OF ANY HAZARDOUS SUBSTANCES FROM THE SITE; (IV) ANY VIOLATION BY CLIENT OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, ORDER, DECREE OR ORDINANCE RELATED TO HAZARDOUS SUBSTANCES; OR (V) ANY CLAIMS MADE BY THIRD-PARTIES WITH RESPECT TO ALLEGED EXPOSURES TO OR DAMAGES CAUSED BY HAZARDOUS SUBSTANCES AT OR FROM THE SITE OR DURING OR RELATED TO ANY PROJECT OR THE PROVISION OF SERVICES, TO THE EXTENT CAUSED BY CLIENT'S NEGLIGENCE OR WILLFUL MISCONDUCT.

#### **SECTION 5: BILLING AND PAYMENT**

5.1 UES will submit invoices to Client in accordance with the Agreement for the specific Project. If the Agreement includes a retainer, the retainer must be received by UES before it will initiate work on the Project.

5.2 Payment will be due 30 days after presentation of invoice. Client will pay a finance charge of one and one-half percent (1 1/2 %) per month, or the maximum rate allowed by law, on all past due invoices. If UES incurs any expenses to collect overdue invoices, Client will also be liable for all sums incurred for reasonable attorneys' fees, expert witness fees, time of UES's employees, expenses and court costs, and interest.

5.3 Client agrees that UES may refuse to release to Client any reports, findings, data and other work product until it has been paid in full for services rendered. UES reserves, and does not waive, any lien rights it may have for unpaid professional services. Client agrees that all reports and other work furnished to Client or its agents that Client has not timely paid for will be returned upon demand and will not be used by the Client for any purpose.

5.4 UES shall have no obligation under this Agreement or any Addendum to provide expert consultant or expert witness services in litigation, arbitration, or any other dispute resolution proceeding, to produce its work product in discovery, to undertake any further investigation or analysis or prepare a report in connection with any such proceeding, or to make available for testimony its current or former employees or consultants. The Parties will execute a new agreement for any such services. In the absence of a new executed agreement for such services, Client will pay UES 150% of its prevailing rates and expenses for the time spent by UES employees and costs incurred on any such additional tasks.

5.5 Services provided at the Client's request outside normal business hours will be performed for an additional fee to be negotiated and reflected in the Agreement or an executed Addendum, or, if no such fee is negotiated, at 150% of UES standard rates.

5.6 Reimbursable expenses, those outside of the scope of the proposed services, are charged to the Client at cost plus fifteen (15) percent and include the following items:

(i) Out of scope reproduction of plans, specifications and other documents, including plans and documents necessary for submission to regulatory agencies, but excluding documents reproduced for use by UES and any of its consultants.

(ii) Out of scope permit application and filing fees advanced by UES. Such fees will be invoiced to Client at cost.

(iii) The cost of equipment rental including, where applicable, equipment operators and subcontracted services, such as authorized photogrammetry, testing services, laboratory services, archeological services, and other specialized services, excluding those services which are explicitly included in the UES proposal. If the services covered by this Agreement are subject to local or state taxes or fees, such additional costs will be charged to the project and are subject to reimbursement as provided herein.

5.7 Fees and schedule commitments are subject to renegotiations for unreasonable delay caused by Client's failure to provide specified facilities or information, or for delays caused by unpredictable occurrences, or force majeure events such as fires, floods, strikes, riots, unavailability of labor or materials or services, acts of God or of public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above may result in additional costs (reflecting a change in scope) beyond that outlined in the proposed Agreement. UES shall have the right to increase its compensation payable by the Client to UES in the event that UES must modify services, facilities or equipment to comply with laws or regulations that become effective after execution of this Agreement, provided UES gives the Client fifteen (15) days prior notice as to the cause for escalation and the additional amounts involved.

5.8 The fees and charges reflected in UES's proposal for services are exclusive of any sales, use, personal property, value added and goods/services taxes. Where applicable, such taxes shall appear as a separate item on UES's invoice and Client shall be liable for the payment of such taxes to UES. Notwithstanding the foregoing, Client shall not be responsible for any foreign, federal, state or local taxes based on UES's net income or receipts, or such other taxes based on UES doing business in any particular jurisdiction.

#### **SECTION 6: INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

6.1 All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES during the provision of the Services, are instruments of service, and shall remain the property of UES. Neither Client nor any other entity shall change or modify UES's instruments of service. UES shall retain sole and exclusive ownership of all ideas, concepts, theories, improvements, designs, original works of authorship, formulas, processes, models, software, algorithms, inventions, know-how, techniques, compositions of matter and any other information owned by UES prior to the date of this Agreement or created or modified by UES during the provision of the Services.

6.2 UES will retain final reports generated as part of the Services for a period of at least five years following submission of such reports or completion of the Services, whichever is later. UES will make those records available to the Client in a reasonable time and manner, subject to payment of a reasonable fee for the time of UES employees to assemble and transmit those documents.

6.3 The Services and all deliverables provided as part of the Services (including but not limited to reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES), are prepared for the sole and exclusive use of Client, and Client is the only entity to which UES owes any duty, in contract or tort, pursuant to any law or under this Agreement. Any information or deliverables generated by UES during the provision of the Services may not be given or disclosed to any other entity, or used or relied upon by any other entity, without the express written consent of UES. Such written consent may take the form of a "reliance letter" which must be agreed to by such other person or entity to whom the Services and Deliverables may be disclosed, and for which a separate fee will be charged. UES shall be entitled to injunctive relief preventing/prohibiting any disclosure, reliance or attribution prohibited hereunder, and Client shall release, indemnify, defend, and hold harmless UES from any losses (including attorney's fees) arising from or related to such unauthorized disclosure, attribution or reliance.



6.4 Each party may disclose to the other party certain information that it considers to be confidential ("Confidential Information") provided such information is disclosed in writing and clearly marked or, if orally disclosed, promptly thereafter reduced to writing and clearly marked "Confidential." In no event shall Confidential Information include information that: (a) is or becomes publicly available other than through a breach of the Agreement; (b) is known to the party receiving such information prior to disclosure or is independently developed by such party subsequent to such disclosure without reference to Confidential Information provided hereunder; or (c) is subsequently lawfully obtained by the party receiving such information from a third party without obligations of confidentiality. Each party agrees that it (a) will not disclose or divulge the other party's Confidential Information to any person, (b) will not use the other party's Confidential Information for its own benefit or the benefit of others, (c) will employ at least the same degree of care in protecting Confidential Information as it employs in protecting its own confidential information, and (d) will, upon termination of the Agreement, or at any time at the request of the other party, return to the other party or destroy all copies of the other party's Confidential Information. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information to its employees, subcontractors and authorized agents who have a need to know such confidential information to fulfill its obligations under this Agreement. In the event a party receives a subpoena or other validly issued administrative or judicial process requesting the disclosure of the other party's Confidential Information, such party will promptly notify the other party and tender to it the defense of such demand and will cooperate (at the other party's expense) with the defense of such demand. Unless the demand shall have been timely quashed or extended, the party receiving the demand shall thereafter be entitled to comply with such demand when and to the extent required by law.

#### **SECTION 7: RISK ALLOCATION**

7.1 CLIENT AGREES WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT AND ANY ADDENDUM THAT THE AGGREGATE LIABILITY OF UES FOR ANY AND ALL CLAIMS, LOSSES, COSTS, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES, SHALL NOT EXCEED THE GREATER OF \$50,000.00 OR THE FEE ACTUALLY PAID BY CLIENT TO UES FOR THE SERVICES. IN CONSIDERATION FOR PAYMENT BY THE CLIENT OF AN ADDITIONAL SUM OF \$1,000, UES AGREES THAT ITS AGGREGATE LIABILITY WITH RESPECT TO ANY AND ALL CLAIMS, LOSSES, COSTS, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES, ARISING FROM SERVICES PROVIDED UNDER THIS AGREEMENT AND ANY ADDENDUM THERETO SHALL BE THE GREATER OF \$50,000 OR UP TO \$1,000,000 IN COVERAGE BY ITS PROFESSIONAL LIABILITY POLICY (INCLUDING ANY DEDUCTIBLE OR SELF INSURED RETENTION). The terms "claim" or "claims" mean any claim in contract, tort, or statute alleging errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligence, negligent misrepresentation, and any other basis giving rise to liability in law or equity.

7.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY PROVIDED FOR IN THE AGREEMENT OR ANY ADDENDUM, UES SHALL NOT BE LIABLE TO CLIENT FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO REDUCTION IN VALUE OF REAL PROPERTY, PENALTIES ASSOCIATED WITH NON-COMPLIANCE WITH LAW, LOST PROFITS, LOSS OF USE, FINANCING COSTS AND LOST SAVINGS) INCURRED BY CLIENT. ITS EMPLOYEES, CONSULTANTS, AGENTS, CONTRACTORS OR SUBCONTRACTORS.

7.3 Client agrees that it will not seek damages in excess of this contractually agreed-upon limitation against any other person or entity who may in turn join UES as a third-party defendant for such damages, or where such person or entity may seek recovery from UES in a separate proceeding. CLIENT SHALL INDEMNIFY, DEFEND AND HOLD UES INDEMNITEES HARMLESS FOR ANY SUCH DAMAGES (INCLUDING ATTORNEY'S FEES) AWARDED TO ANY OTHER PERSON OR ENTITY AS A RESULT OF ANY LITIGATION, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING COMMENCED BY CLIENT AGAINST ANY SUCH PERSON OR ENTITY FOR DAMAGES FOR WHICH UES MAY BE IN WHOLE OR PART BE HELD LIABLE INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

#### **SECTION 8: INSURANCE**

8.1 UES represents it has Worker's Compensation insurance in force, that is has commercial general liability coverage in the amount of \$1,000,000.00 and has professional liability insurance in the amount of \$1,000,000.00.

8.2 Client shall maintain such insurance as is necessary to fully underwrite Client's defense and indemnity obligations set forth herein, and shall, upon request by UES, provide proof to UES to verify such insurance.

#### **SECTION 9: INDEMNITY**

9.1 IN ADDITION TO AND NOTWITHSTANDING ANY OTHER PROVISION IN THESE GENERAL CONDITIONS, CLIENT AGREES, TO THE FULLEST EXTENT PROVIDED BY LAW, TO RELEASE, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO UES), INDEMNIFY, AND HOLD UES, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES AND SUCCESSORS ("UES INDEMNITEES") HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES FROM OR BY ANY PERSON OR ENTITY ARISING FROM (1) ACTS OR OMISSIONS BY CLIENT, CLIENT'S AGENTS, STAFF, AND OTHERS EMPLOYED BY OR CONTRACTED TO CLIENT, INCLUDING ARCHITECTS, ENGINEERS, CONTRACTORS, SUBCONTRACTORS, AND CONSULTANTS, WHETHER OR NOT UES IS RESPONSIBLE IN WHOLE OR IN PART FOR THE ACTS OR OMISSIONS FOR WHICH CLIENT IS INDEMNIFYING UES AND (2) THE PROVISION OF THE SERVICES BY UES EXCEPT TO THE EXTENT CAUSED BY UES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SUCH EXCEPTION SUBJECT TO THE LIMITS SET FORTH IN SECTION 7. FOR THE AVOIDANCE OF DOUBT, CLIENT'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 9.1 INCLUDE, WITHOUT LIMITATION, INDEMNIFICATION FOR ANY CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

9.2 UES AGREES TO INDEMNIFY, AND HOLD CLIENT HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING TO THE EXTENT SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY UES IN THE PROVISION OF THE SERVICES, SUBJECT TO THE LIMITS SET FORTH IN SECTION 7.

9.3 To the extent either party's damages are covered by available insurance, Client and UES waive all rights of subrogation against each other and against the contractors, subcontractors, consultants, agents, and employees of the other, except such rights as they may have to the proceeds of such insurance.

#### **SECTION 10: DISPUTE RESOLUTION**

10.1 All claims, disputes, and other matters in controversy between UES and Client arising out of or in any way related to this Agreement or any Addendum shall be decided by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, UES shall not be required to arbitrate any legal and/or equitable claims (including statutory and equitable liens) for collection of monies due. The successful party in any such action will be entitled to recover its reasonable attorneys' fees, expert witness fees, and other claim-related expenses and court costs incurred, and also the time value at prevailing rates of its employees reasonably incurred in prosecuting or defending the claims, with any claims against UES subject to the limitations in Section 7.

10.2 Notwithstanding the foregoing, all claims, including for negligence or any other cause whatsoever that the Client has or claims to have against UES, shall be deemed waived unless (i) Client notifies UES of the claim or claims within thirty (30) days of discovery thereof, and (ii) if



contends that a claim exists against UES for negligence or another violation of a standard of care owed by UES, Client has first provided UES with a written certification executed by an independent design professional currently practicing in the same discipline as UES. The certification shall: a) identify the name of the professional; b) specify each and every act or omission that the certifier contends is a violation of the standard of care identified in the Proposal Agreement; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to UES not less than thirty (30) calendar days prior to the institution of any arbitration or judicial proceeding.

10.3 NOTWITHSTANDING THE FOREGOING, UES SHALL HAVE NO LIABILITY FOR ANY CLAIM DISCOVERED BY CLIENT MORE THAN ONE YEAR AFTER DELIVERY OF THE LAST ISSUED REPORT BY UES FOR THE SERVICES DESCRIBED IN THE PROPOSAL AGREEMENT.

#### **SECTION 11: TERMINATION**

11.1 This Agreement may be terminated by either party for cause upon seven (7) days written notice and opportunity to cure in the event of a material breach by the other party, or in the case of a force majeure event such as terrorism, act of war, riot, insurrection, strike, declared public health emergency, flood, unusual weather condition, or act of God that continues or affects the Site for more than seven (7) calendar days. Such termination shall not be effective if such material breach or force majeure event has been remedied before expiration of the period specified in the written notice. In the event of any termination, UES shall be paid for Services (including any related costs and expenses) performed up to the termination notice date plus reasonable termination expenses.

11.2 UES and Client may terminate this Agreement at any time by mutual written consent.

11.3 In the event of termination or a suspension for more than three months of the Project for which these Services are to be provided, UES may in its sole discretion complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs incurred by UES in completing such analyses, records, and reports.

#### **SECTION 12: REVIEWS, INSPECTIONS, TESTING, AND OBSERVATIONS**

12.1 If the Services include oversight, monitoring or observation of work being conducted by third parties (other than UES subcontractors), such services shall be conducted solely to determine that the work being overseen, monitored, or observed is in general conformity to the contractual requirements between Client and such third parties. Client shall have sole responsibility and authority to reject, suspend or stop the work of such third parties, or modify or terminate any agreement between Client and such third parties.

12.2 UES shall not have the responsibility or authority to stop, suspend, or modify the work of such third parties, and does not guarantee that work it inspects conforms in all respects to the design, or to applicable laws, statutes, regulations, rules or codes, and it shall have no liability for design or construction defects, or the failure of Client's designers or contractors to comply with their contractual obligations.

12.3 Neither the activities of UES pursuant to this Agreement, nor the presence of UES or its employees, representatives, or subcontractors on the Project Site, shall be construed to impose upon UES any responsibility for means or methods of work performance, superintendence, sequencing of construction, or safety or environmental conditions or compliance at the Project Site. Client acknowledges that Client or its contractor is solely responsible for Project jobsite safety and compliance with environmental, health and safety laws.

12.4 Client is responsible for scheduling all inspections and construction materials testing ("CMT") activities of UES. UES will not be responsible for tests and inspections that it does not perform due to Client's failure to timely schedule work.

12.5 Client shall at the time of execution of the Agreement provide UES with a proposed schedule for tests and inspections UES shall perform. Client will give reasonable notice of all changes to that schedule. UES shall not be required to conduct any tests or inspections on less than 72 hours written notice, nor after normal business hours or on weekends or holidays.

#### **SECTION 13: SOLICITATION OF EMPLOYEES**

Client agrees that during the term of the Agreement, and for a period of one (1) year after the last date on which UES has provided services hereunder, Client shall not, directly or indirectly, solicit or attempt to solicit for employment, or contract directly or indirectly with, any employee of UES except as authorized in writing by UES. Client agrees that its breach of this Section shall cause UES irreparable harm, and that UES may, in addition to recovering any provable damages, enforce this obligation by injunction.

#### **SECTION 14: NO ASSIGNMENT**

Neither Client nor UES may delegate, assign or transfer its rights or obligations under the Agreement for any reason without the written consent of the other party. For avoidance of doubt, this provision does not affect UES' right, at its sole discretion, to use contractors or subcontractors in the performance and delivery of the Services.

#### **SECTION 15: GOVERNING LAW**

15.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the conflict of laws provisions of the State of Texas to the extent such principles or rules would require or permit the application of the laws of any other jurisdiction.

15.2 If any of the provisions of this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired and will survive. Limitations of liability and indemnities provided for will survive termination of this Agreement for the period of all applicable statutes of limitations to which they relate.

15.3 **WITH RESPECT TO CLIENT'S INDEMNIFICATION OBLIGATIONS HEREUNDER, THESE TERMS AND CONDITIONS COMPLY WITH THE REQUIREMENT, KNOWN AS THE EXPRESS NEGLIGENCE RULE, TO EXPRESSLY STATE IN A CONSPICUOUS MANNER TO AFFORD FAIR AND ADEQUATE NOTICE THAT THESE TERMS AND CONDITIONS CONTAIN PROVISIONS REQUIRING ONE PARTY TO BE RESPONSIBLE FOR THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANOTHER PARTY.**

#### **SECTION 16: INTEGRATED AGREEMENT**

16.1 This Agreement, and any Addendum represent and contain the entire and only agreement and understanding among the parties with respect to the subject matter of their subject matter, and they supersede all prior or contemporaneous oral and written agreements, understandings, representations, inducements, promises, communications, and conditions between the parties. No agreement, understanding, representation, inducement, promise, or condition with respect to the subject matter of this Agreement shall be relied upon by the parties unless expressly incorporated herein.

16.2 In the event any provision of the Agreement or these General Conditions shall be invalid, illegal or unenforceable in any respect, such a provision shall be considered separate and severable from the remaining provisions of this Agreement, and the validity, legality or enforceability of any of the remaining provisions of this Agreement shall not be affected or impaired by such provision in any way.

#### **SECTION 17: NO AMENDMENT**

17.1 The Agreement, including these General Conditions, may not be amended, or modified except by a writing signed by both parties.

17.2 Failure by either party at any time to enforce any obligation by the other party, to claim a breach of any term of the Agreement or to exercise any power agreed to hereunder will not be construed as a waiver of any right, power or obligation under the Agreement, will not affect any subsequent breach, and will not prejudice either party as regards any subsequent action.

**SECTION 18: WAIVER OF JURY TRIAL**

Both Client and UES waive trial by jury in any action arising out of or related to the Agreement, and any Addendum to the Agreement.

**SECTION 19: CONTRACTUAL STATUTE OF LIMITATIONS**

To the extent that a statute of limitations for any cause of action against UES arising from this Agreement or any Addendum can be modified contractually in accordance with law, and the relevant statute of limitations for any claim arising of or relating to any this Agreement or any Addendum, or the services provided by UES thereunder, is greater than two (2) years, the relevant statute of limitations shall be two (2) years from the date UES last provided services thereunder. The parties agree that this provision is material to the decision of UES to enter into this agreement, that it is a reasonable measure to allocate and insure against risk, and that it does not violate public policy. This section shall not be construed as an agreement to increase the statute of limitations for any causes of action that are otherwise barred by law.

**SECTION 20: HEADINGS**

The headings in these General Conditions are for reference only and are not intended to form part of the contract between the Parties.

REVISED: 3/7/24

# City Council Meeting

## Agenda Item

### Data Sheet

Meeting Date: April 21, 2025

#### Topic:

Workshop Discussion Only – Approve Supplemental Number Two, amending the Professional Services Agreement with Freese & Nichols, Inc. for Project Number 2023-10010, East Water Plant project, for a net decrease of \$181,019, for a total contract amount not-to-exceed \$2,435,105, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. This expenditure is included in the Fiscal Year 2024-2025 Capital Improvement Budget.

#### Background:

The completed Water Master Plan identified recommendations for projects needed to address the required capacity for the current demand and future growth including the recommendation to construct a new water plant to be located on the eastern side of the system. In November 2022, the City entered into a professional services agreement with Freese & Nichols, Inc. to complete the design and oversee construction of the East Water Plant project.

The professional services agreement with Freese & Nichols, Inc. (FNI) included a scope of work to complete the design and oversee construction of the project to a new pump station, groundwater well, and ground storage tank, for a not-to-exceed amount of \$2,606,076. Supplemental number one to the professional services agreement increased the not-to-exceed amount by \$10,048 to account for surveying and drainage profiling for the site.

Supplemental number two decreases the not-to-exceed amount by \$181,019, and changes the following tasks:

1. **Resident Project Representation – (\$227,019)**
  - a. Construction management for construction phase.
2. **Construction Material Testing – \$46,000**
  - a. Coordination of material testing laboratory for the testing of compacted soils and concrete.

The proposed supplemental decreases the total contract amount by \$181,019, for a not-to-exceed contract amount of \$2,435,105. This project was included in the FY 2024-2025 Capital Improvement Budget as an on-going capital project as part of the Certificate of Obligation issuance.

East Water Plant Project Budget Breakdown		
Project Element	Total Contract	Remaining Contract
Land Acquisition – Threshold	\$9,286.18	\$3,236.18
Engineering – Freese & Nicols*	\$2,435,105	\$1,115,134.58
Construction – PENDING**	\$17,101,608.82**	N/A
<b>Project Budget \$19,546,000</b>	<b>Total Contracts \$17,101,608.82</b>	<b>Remaining Funding \$0</b>

\*After amendment two decrease of \$181,019

\*\*Bids pending submission in April (construction estimate only)

This item approves supplemental number two with Freese & Nichols, Inc. amending the professional services agreement for a net decrease of \$181,019, for a total contract amount not-to-exceed \$2,435,105.

**Origination:** Project Management

**Recommendation:**

Staff recommends approving supplemental number two with Freese & Nichols, Inc. amending the professional services agreement for a net decrease of \$181,019, for a total contract amount not-to-exceed \$2,435,105.

**Party(ies) responsible for placing this item on agenda:** Meagan Mageo, Project Manager

**FUNDING (IF APPLICABLE)**

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: #400-613-6409

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed	<u>Meagan Mageo</u>	Approved by	<u></u>
	Staff Member		City Manager
	Date		Date

**SUPPLEMENTAL NO. 2  
PROFESSIONAL SERVICES AGREEMENT  
FOR  
ENGINEERING SERVICES  
RELATED TO  
PROJECT NO. 2023-10010  
CITY OF TOMBALL  
EAST WATER PLANT**

**THE STATE OF TEXAS           §  
   §  
COUNTY OF HARRIS         §**

THIS IS A SUPPLEMENTAL AGREEMENT amending an AGREEMENT between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and Freese & Nichols, Inc. ("Engineer"), executed the \_\_\_\_ day of April 2025, relative to the addition of work for the following tasks:

- 1. Resident Project Representation – (\$227,019)**
  - a. Reduction in construction management efforts.
- 2. Construction Material Testing – \$46,000 (not-to-exceed)**
  - a. Coordination of material testing laboratory for the testing of compacted soils and concrete.

**WITNESSETH:**

WHEREAS, the City desires to execute a supplemental amendment to the Professional Services Agreement for services related to the East Water Plant (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to project planning and design, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional engineering;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

## **SECTION I. SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional services as outlined and defined in the Proposal attached hereto as Exhibit A, and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Engineer compensation as stated in the Section VII.

## **SECTION II. CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent engineering practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

## **SECTION III. OWNERSHIP OF WORK PRODUCT**

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same. It is further understood and agreed that ownership and usage rights associated with the above referenced documents and analyses, hereinafter referred to as instruments, are contingent upon Engineer's completion of the services which will result in the production of such instruments and Engineer's receipt of payment, in full, for said services. Additionally, City understands and agrees that the rights described and provided hereunder shall not preclude or prevent Engineer from continuing to use those processes, analyses and data.

## **SECTION IV. TIME FOR PERFORMANCE**

The time for performance is an estimated 1,200 calendar day duration beginning from the execution date of this Agreement. Upon written request of the Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

**SECTION V.  
COMPLIANCE AND STANDARDS**

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

**SECTION VI.  
INDEMNIFICATION**

**To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.**

**SECTION VII.  
ENGINEER'S COMPENSATION**

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed **\$(181,019)**, including reimbursable expenses as identified in Exhibit "A", for a total contract amount not to exceed **\$2,435,105**.

**SECTION VIII.  
INSURANCE**

Engineer shall procure and maintain insurance for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness, disease, or death, claims or damages because of injury to or destruction of property, including loss of use resulting therefrom, and claims of errors and omissions.

## **SECTION IX. TERMINATION**

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer 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 the charges as have been previously made. Copies of all completed or partially completed maps, studies, reports, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

## **SECTION X. ADDRESSES, NOTICES AND COMMUNICATIONS**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Consultant at the following address:

Freese & Nichols, Inc  
Attention: Richard Weatherly  
11200 Broadway Street, Suite 2320  
Pearland, Texas 77584

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball  
Attn: Project Manager  
501 James Street  
Tomball, Texas 77375

## **SECTION XI. LIMIT OF APPROPRIATION**

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.



**SECTION XII.  
SUCCESSORS AND ASSIGNS**

The City and Engineer 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. Neither the City nor Engineer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**SECTION XIII.  
DISCLOSURE OF INFORMATION**

Engineer shall under no circumstances release any material or information developed in the performance of its services hereunder without the express written permission of the City.

**SECTION XIV.  
MODIFICATIONS**

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

**SECTION XV.  
ADDITIONAL SERVICES OF ENGINEER**

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Exhibit "A". These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Exhibit "A," up to the amount authorized in writing by the City.

**SECTION XVI.  
CONFLICTS OF INTEREST**

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Consultant shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

**SECTION XVII.  
PAYMENT TO ENGINEER FOR SERVICES AND  
REIMBURSABLE EXPENSES**

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

**XVIII.  
MISCELLANEOUS PROVISIONS**

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence or performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Engineer further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

E. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Engineer is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

F. In accordance with Chapter 2274 of the Texas Government Code, Engineer covenants that it: (1) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this contract against a firearm entity or firearm trade associations.

IN WITNESS WHEREOF, the City of Tomball, Texas, has lawfully caused this Agreement to be executed by its Mayor; and Engineer, acting by its duly authorized officer/representative does now sign, execute and deliver this instrument.

EXECUTED on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Company Name: Freese & Nichols, Inc.**

*Richard Weatherly*

Name: Richard Weatherly, PE

Title: Vice President

**CITY OF TOMBALL, TEXAS**

\_\_\_\_\_  
David Esquivel, City Manager

ATTEST:

\_\_\_\_\_  
Shannon Bennett, Assistant City Secretary

# EXHIBIT A



CITY OF TOMBALL, TX

501 James Street

Tomball, Texas 77375

## PROFESSIONAL SERVICES AGREEMENT

### AMENDMENT #2

FNI Project: TMB22839

Client Contract: 2023-10010

Date: 3/31/2025

**Project Name:** EAST WATER PLANT  
Adjustment of Construction Management and Resident Project Representation. Addition of Construction Materials Testing to be provided by UES

**Description of Services:** There is a reduction in construction management effort in the amount of \$227,019. Conversely, there is an additional cost for the construction material testing in the amount of \$46,000. The net reduction in the overall cost of the project is \$181,019. (Attached is amended Scope of Work)

**Deliverables:** N/A

**Schedule:** Construction schedule is increased by one month to 20 months

**Compensation Type:** Not to Exceed Fee

**Current Contract Amount:** \$2,616,124

**Amount of this Amendment:** (\$181,019)

**Revised Total Amount Authorized:** \$2,435,105

*The services described above shall proceed as amended upon execution of this Amendment. All other provisions, terms, and conditions of the Professional Services Agreement which are not expressly amended shall remain in full force and effect.*

CITY OF TOMBALL, TX

FREESE AND NICHOLS, INC.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: David Esquivel

Name: Jason Ward

Title: City Manager

Title: Vice President

Date: \_\_\_\_\_

Date: 4/1/2025

**SCOPE OF SERVICES AND RESPONSIBILITIES OF CITY  
EAST WATER PLANT FINAL DESIGN AMENDMENT 2  
MARCH 31, 2025**

PROJECT UNDERSTANDING

Tomball completed an update of their Water Master Plan in 2018. The master plan identified improvement needs in the City's water distribution system that that will help the City serve anticipated future water demands. These improvement recommendations included construction of a new water plant (East Water Plant) at the eastern side of the City system along Hufsmith-Kohrville road in between Mahaffey road and Country Club Green Drive. This project will include construction of a new pump station, groundwater well, and ground storage tank.

Assumptions

- The construction package will include work for the following two facilities:
  - A new 3,000 gpm pump station with space for expansion to 4,500 gpm in the Hufsmith-Kohrville Rd corridor between Spell Rd in the south and FM 2920 in the north
  - 1.0 MG ground storage tank
  - Groundwater well.
- The project will include a siting study, preliminary and final design.
- A Siting Study will be prepared for the ground water well location and pump station with GST tank. This will aid the city in securing a site of roughly 1.5 to 2 Acres.
- A preliminary design report (PDR) will be prepared for the pump station improvements.
- The PDR will include alternatives for the pump station layout with recommendations for the future delivery point from NHCRWA, the ground storage tank, pump types, and electrical equipment.
- Final Design will include all required environmental, drainage, civil, architectural, structural, electrical and hydraulic design.
- The entire site will have a perimeter chain link fence with one motorized sliding vehicular access gate.
- The site will require yard piping, landscaping screening, grading, driveway, fencing, drainage, lighting and irrigation.
- Based on previous experience from the Water Well consultant, there could be water quality challenges to be addressed. FNI will present several mixing system options during design phase and will assume selection of one of these is included in the design.
- Chlorine gas will be used initially with provisions for conversion to chloramines when surface water is brought to the site.
- Overflow from the ground tank will be routed to drain away from future development and drainage design as needed.
- A stand-by generator will be included in the design and will be diesel driven.
- The project will use a design-bid-build delivery method.
- The construction project will be bid as a single construction package.
- *The project will include Materials Testing per the proposal provided in special services by the subcontractor UES*

The project tasks are broken down in **Table 1**:

**Table 1: East Water Plant Tasks**

Task	Task Description
<b>Basic Services</b>	
A	Project Management
B	Siting Study
C	Preliminary Design
D	Final Design Phase
E	Bid Phase
F	Construction General Representation
<b>Special Services</b>	
G	Resident Project Representation
H	Topographic Survey
I	Geotechnical Investigation
J	AGS Siting Report
K	Environmental Review and Permitting
L	Construction Materials Testing

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

**TASK A: PROJECT MANAGEMENT**

Consultant shall provide project management services for the project. The following services shall be provided:

**A1. Project Kickoff Meeting (internal)**

No change.

**A2. Project Kickoff Meeting**

No change.

**A3. Monthly Progress Meetings (internal)**

No change.

**A4. Monthly Progress Meetings**

No change.

**A5. City Council Presentations**

No change.

**A6. Project Schedule**

No change.

**A7. Monthly Project One Page Reports**

No change.

**A8. Project Scheduler Review**

No change.

**A9. Contract Operations**

No change.

**A10. Contract Preparation**

No change.

**A11. Project Close Out**

No change.

**A12. Quality Management**

No change

**TASK B: SITING STUDY**

**B1. Site Evaluation**

No change.

**B2. Draft Siting Memorandum**

No change.

**B3. Presentation to the City**

No change.

**B4. Final Siting Memorandum**

No change.

**TASK C: PRELIMINARY DESIGN 3,000 GPM PS:**

FNI shall provide professional services in this phase as follows:

**C1. Hydraulic Analysis**

No change.

**C2. Storage Tank**

No change.

**C3. Pump Station System Curves**

No change.

**C4. Pump Evaluation and Selection**

No change.

**C5. Well Pumping Capacity**

No change.

**C6. Phase I Environmental Site Assessment**

No change.

**C7. Chemical Process Layout**

No change.

**C8. Civil and Structural Plans**

No change.

**C9. Electrical Power Supply**

No change.

**C10. Draft Preliminary Design Report**

No change.

**C11. Review Meeting with the City Staff**

No change.

**C12. Final Preliminary Design Report**

No change.

**TASK D: FINAL DESIGN 3,000 GPM PS :**

FNI shall provide professional services in this phase as follows:

**D1. 60% Final Design**

No change.



**D2. 90% Final Design**

- a. No change.
- b. No change.
- c. No change.
- d. No change.
- e. No change.
- f. No change.
- g. No change.
- h. No change.
- i. No change.
- j. No change.

**D3. 100% Final Design**

- a. No change.
- b. No change.

**TASK E: BID PHASE**

Upon completion of the design services and approval of "Final" drawings and specifications by City, Consultant will proceed with the performance of services in this phase as follows:

**E1. Prepare Bid Documents**

No change.

**E2. Distribute Bid Documents**

No change.

**E3. Maintain Distributed Bid Documents**

No change.

**E4. Issue Addenda and Respond to Questions**

No change.

**E5. Pre-bid Conference**

No change.

**E6. Bid Tabulation and Award Recommendation**

No change.

**E7. Conformed Contract Documents**

No change.

**E8. Issue of Documents and Notice to Proceed to Contractor**

No change.

**TASK F: CONSTRUCTION GENERAL REPRESENTATION**

No change.

**F1. Pre-Construction Conference**

No change.

**F2. Construction Communication Plan**

No change.

**F3. Construction Documents Review**

No change.

**F4. Pay Request Review**

No change.

**F5. Monthly Site Visits**

No change.

**F6. Non-Conforming Work Notification**

No change.

**F7. Construction Documents Interpretation**

No change.

**F8. Management of Change**

No change.

**F9. Management of Change**

No change.

**F10. Pump Station Start Up**

No change.

**F11. Final Walk Thru**

No change.

**F12. Record Drawings**

No change.

**SPECIAL SERVICES:** FNI shall render the following special services once they have been authorized by the City

**TASK G: CONSTRUCTION MANAGEMENT AND INSPECTION**

The Consultant will have a Resident Project Representative (RPR) on the Site. The duties, responsibilities, and the limitations of authority of the RPR, and designated assistants, are as follows:

**G1. CONSTRUCTION MANAGEMENT GENERAL ASSUMPTIONS**

No change.

**G2. CONSTRUCTION MANAGER AND RESIDENT PROJECT REPRESENTATIVE ASSIGNMENTS**

No change.

**G3. DUTIES AND RESPONSIBILITIES OF THE RPR**

Provide the services of an on-site Construction Inspector / RPR acceptable to the City. FNI will provide a level of service based on the duration and schedule of the project as outlined in the fee spreadsheet. The Consultant will provide one half time inspector and a part-time construction manager. The inspector will cover the pump station project over the expected construction duration of 19 months. He is expected to work an average of 20 hours per week. The CM will average two trips to the site a week for the duration of the work, expected to be 19 months.

**TASK H: TOPOGRAPHIC SURVEY**

Upon written notice to proceed, Consultant shall retain (as a subconsultant) and monitor the services of a surveying firm to perform surveying services for the project. The following survey shall be provided.

**H1. ABSTRACT**

No change.

**H2. PERMIT FOR ACCESS PROPERTY**

No change.

**H2. TOPOGRAPHIC SURVEY**

No change

**H2. DIG TESS CALL**

No change.

**TASK I: GEOTECHNICAL INVESTIGATION**

Consultant will render the following geotechnical engineering professional services in connection with the project consisting of field exploration, laboratory testing, engineering analysis, and reporting.

**I1. FIELD EXPLORATION**

No change.

**I2. LABORATORY TESTING**

No change

**I3. PUMP STATION GEOTECHNICAL DESIGN REPORT**

No change.

**I4. GROUND STORAGE TANK GEOTECHNICAL DESIGN REPORT**

No change.

**TASK J: WELL SITING REPORT**

The Report including the following\*

**J1. PROPOSED WATER WELL FESIBILITY STUDY**

No change.

**J2. WELL CONSTRUCTION PARAMETERS**

No change.

**J3. POLLUTION HAZARDS STUDY AND REPORT**

No change.

**J4. WELL AND PUMP SPECIFICATIONS REVIEW**

No change.

**J5. WELL CONSTRUCTION AND FIELD SERVICES**

No change.

**J6. LABORATORY SERVICES**

No change.

**TASK K: ENVIRONMENTAL REVIEW**

No change.

**K1. WETLAND DELINEATION**

No change.

**K2. HAZARDOUS MATERIALS REVIEW**

No change.

**K3. SECTION 404 PERMITTING**

No change.

**K4. PRECONSTRUCTION NOTIFICATION**

No change.

**K5. SECTION 404 MITIGATION PLAN**

No change.

**TASK L: CONSTRUCTION MATERIALS TESTING provided by UES**

Consultant will coordinate with the material testing laboratory (UES) the testing of compacted soils and concrete based on the proposal attached to this amendment in a total cost not to exceed \$40,000.

**Summary of Meetings**

No change

**Summary of Presentations**

No change

**List of Deliverables**

No change

**Summary of Project Schedule**

No change

**SUMMARY OF AMENDMENT FEE FOR ENGINEERING SERVICES**

FNI proposes to perform the basic and special services outlined in the above sections for a total **lump sum fee of \$1,602,448**, and **not-to-exceed fee of \$832,657**, for a **total project cost of \$2,435,105**, as shown in **Table 2**.

**Table 2: Summary of Fee for Basic and Special Services**

Basic Services Tasks			
Description	Current	Amend	Proposed
Tasks A-C: Project Mgmt./Siting Study/Preliminary Design	\$ 525,869	\$0	\$525,869
Task D: Final Design Phase	\$ 772,772	\$0	\$772,772
Task E: Bid Phase	\$ 36,165	\$0	\$36,165
Task F: Construction Phase General Rep.	\$ 267,641	\$0	\$267,641
<b>Basic Services Subtotal (Lump Sum)</b>	<b>\$ 1,602,448</b>	<b>\$0</b>	<b>\$1,602,448</b>
Special Services Tasks			
Description	CPM Fee		
Task G: Resident Project Representation	\$ 824,655	(\$227,019)	\$597,636
Task H: Topographic Survey	\$ 22,967	\$0	\$22,967
Task I: Geotechnical Investigation	\$ 61,100	\$0	\$61,100
Task J: AGS Siting Report	\$ 80,755	\$0	\$80,755
Task K: Environmental Review and Permitting	\$ 24,199	\$0	\$24,199
Task L: Construction Material Testing (UES)	\$0	\$46,000	\$46,000
<b>Special Services Subtotal (CPM)</b>	<b>\$ 1,013,676</b>	<b>(\$ 181,019)</b>	<b>\$ 832,657</b>
<b>Project Total (Basic + Special Services)</b>	<b>\$ 2,616,124</b>	<b>(\$ 181,019)</b>	<b>\$ 2,435,105</b>



Mr. Carlos Quintero  
Freese and Nichols, Inc.  
10497 Town and Country Way, Suite 600  
Houston, TX 77024

February 14, 2025

Re: UES Proposal No. 110676  
Construction Materials Testing  
East Water Plant (LOA)  
Tomball, TX

Dear Mr. Quintero:

UES Professional Solutions 44, LLC (UES), is pleased to submit this proposal for providing Construction Materials Testing (CMT) and related quality control services for the referenced project.

UES has integrated the resources of Alpha Testing, Riner Engineering, Rock Engineering and Testing and In-Control Technologies to form the largest geotechnical engineering, materials testing, special inspection and environmental services firm in the Texas Gulf Coast region. Our personnel and equipment resources are unmatched and we have the experienced staff to perform the necessary CMT services in accordance with the project requirements. In the Houston area, UES is accredited by the American Association for Laboratory Accreditation (A2LA) and meets the requirements of ASTM E329. We also participate in Cement and Concrete Reference Laboratory (CCRL) and AASHTO re:source proficiency sampling programs.

For the purpose of this proposal, we have estimated quantities and tests per our experience, with the information provided. The actual costs for CMT services can decrease or increase with changes in the scope of work and are heavily dependent on the contractor's work methods, production, and sequencing. This is only an estimate for budgetary purposes and UES's total fee will be based on the actual amount of time and laboratory testing required for the project. These services will be performed on a unit price basis in accordance with the attached Schedule of Services and Fees. UES is willing to re-evaluate our budget once a formal construction schedule is finalized.

UES utilizes a proprietary electronic laboratory data management and report generation system. CMT reports prepared in Adobe PDF format are emailed to the Client and their designees. Report turnaround time is typically one day. UES also provides an extranet where CMT reports can be accessed by the Client at any time. CMT reports are automatically posted to our extranet when they are emailed. Our system is designed to provide high quality, real-time information.

By execution of this proposal, the undersigned Client acknowledges and agrees that the document entitled "Terms and Conditions" has been provided or made available to Client and Client agrees that such Terms and Conditions shall be applied to the present Proposal and shall be fully binding upon Client. The Terms and Conditions are fully incorporated into this Proposal by reference as if set forth at length.

## FIRM PROFILE

UES is a registered Texas engineering firm (#813) and a Texas geoscience firm (#50341), meets the requirements of ASTM E-329, is AASHTO R-18 accredited, and has engineers licensed in multiple states. UES currently employs over 275 people.

UES recognizes that our client base faces challenges at every turn, either meeting a deadline, meeting a budget, or overcoming a field or design challenge. It is our internal challenge to make your challenges ours. Tell us what you need, we will take ownership, ask the needed questions, then be responsive in execution.

### BUSINESS LOCATIONS

#### Austin

2324 Ridgepoint Drive, Suite E  
Austin, Texas 78754  
Phone: 281-469-3347

#### Corpus Christi

6817 Leopard Street  
Corpus Christi, TX, 78409  
Phone: 361-883-4555

#### Dallas

2209 Wisconsin Street  
Dallas, TX 75229  
Phone: 972-620-8911

#### Fort Worth

5058 Brush Creek Road  
Fort Worth, TX 76119  
Phone: 817-496-5600

#### Houston – East

4667 Kennedy Commerce Drive  
Houston, Texas 77032  
Phone: 281-469-3347

#### Houston – North

14731 Pebble Bend Dr  
Houston, Texas, 77068  
Phone: 281-580-8892

#### Houston – West

15811 Tuckerton Road  
Houston, TX 77095  
Phone: 713-360-0460

#### Rio Grande Valley

11818 West Business Hwy 83, Unit 1  
La Feria, TX 78559  
Phone: 956-201-4797

#### Round Rock

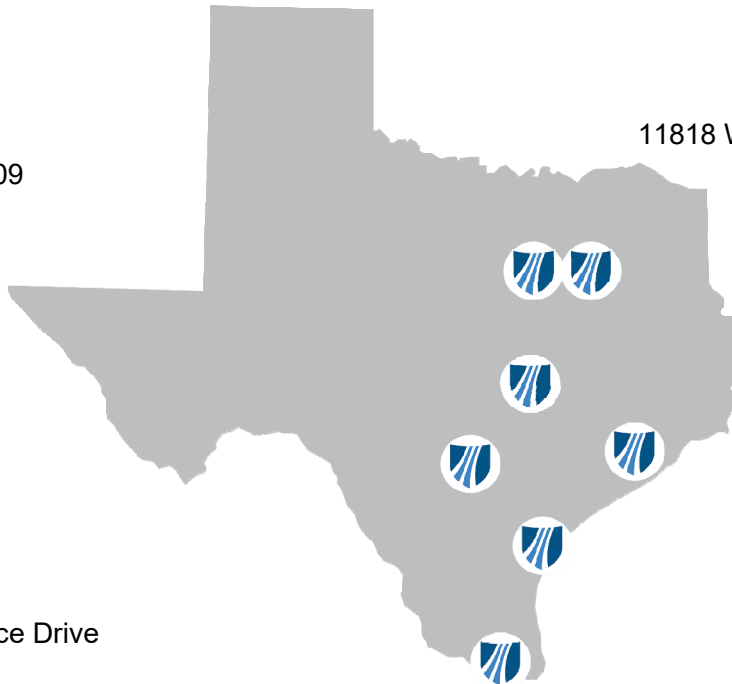
7 Roundville Lane  
Round Rock, TX, 78664  
Phone: 512-284-8022

#### San Antonio – East

4740 Perrin Creek, Suite 480  
San Antonio, TX 78217  
Phone: 210-249-2100

#### San Antonio – West

10856 Vandale Street  
San Antonio, TX, 78216  
Phone: 210-495-8000



### Quality Control

All testing equipment in UES's laboratories is calibrated on an annual basis using traceable standards (NIST or NISTL). Calibrations are confirmed by CCRL and AASHTO on a bi-annual basis during third-party inspections. Along with calibration of equipment, UES also maintains an internal QA/QC program to assure consistent and reliable test results. This program pertains to methodologies for performing tests that have been developed and expanded through years of experience.



We appreciate the opportunity to submit this proposal for CMT services and look forward to working with you during the construction phase of this project. If there are any questions concerning this proposal or if we can be of further assistance, please contact us at your convenience.

Respectfully submitted,

**UES**



Leah Martinez  
Project Estimating Manager

**CLIENT APPROVAL**

**ESTIMATED BUDGET: \$40,000.00**

Consultant offers the CLIENT the Proposal as described above. CLIENT may accept Consultant's offer by signing in the space provided below and returning a signed copy to Consultant. Such notification may be given by fax or by returning the original proposal. In the event the CLIENT authorizes work without returning a signed copy, the CLIENT agrees to be bound by the terms and conditions as stated herein. The proposal described above has been read, understood, and accepted by CLIENT effective as of the date that the executed proposal is returned to Consultant.

**EXECUTED BY CLIENT'S AUTHORIZED REPRESENTATIVE:** \_\_\_\_\_  
(signature)

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date Accepted: \_\_\_\_\_

CLIENT Business Name: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**ACCOUNTS PAYABLE INFORMATION**

A/P Contact Name: \_\_\_\_\_ A/P Contact Telephone: \_\_\_\_\_

\*A/P Contact Email: \_\_\_\_\_

*\*A/P Contact Email must be provided before UES can proceed with its proposed services*

**REPORT DISTRUBUTION**

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

**UES**  
Construction Materials Engineering and Testing  
Basic Services and Cost Estimate  
Project Name: East Water Plant (LOA); Tomball, TX

DESCRIPTION	Estimated Quantity	Unit Rate	Estimated Total
<b>CMT Testing</b>			
Not to exceed budget based on attached fee schedule	1	\$40,000.00	\$40,000.00
<b>ESTIMATED BUDGET</b>			<b>\$40,000.00</b>

**UES**  
Construction Materials Engineering and Testing  
Standard Unit Rates  
Project Name: East Water Plant (LOA); Tomball, TX

<b>DESCRIPTION</b>	<b>UNIT RATE</b>
<b><u>EARTHWORK</u></b>	
Engineering Technician services performing in-place field density testing (per hour)	\$58.00
Engineering Technician services for sample pick-up (per hour)	\$58.00
Overtime (in excess of 8 hours per day) (per hour)	\$87.00
Vehicle Trip Charge (per trip)	\$100.00
Nuclear Density Equipment Charge (per trip)	\$100.00
Moisture/Density Relationship of Soils	
Standard Proctor (ASTM D 698) (each)	\$250.00
Modified Proctor (ASTM D 1557) (each)	\$250.00
Target Moisture Proctors (per point) (each)	\$120.00
With Lime added in laboratory, add (each)	\$75.00
Atterberg-limit Determinations	
Natural (each)	\$85.00
With Lime, add (each)	\$85.00
No. 200 Sieve Analysis (each)	\$85.00
Free Swell Tests (each)	\$100.00
Lime Series, pH Method (Eades & Grim Method) (each)	\$375.00
Soluble Sulfate (Standard 8 Day turn around, Rush rates quoted upon request) (each)	\$125.00
Compressive Strength of Stabilized Sand (each)	\$60.00
Completion Letter (min)	\$500.00
Moisture Content Tests (each)	\$9.50
Engineering Review (per hour)	\$150.00
<b><u>CONCRETE</u></b>	
Engineering Technician services for molding concrete test specimens, performing slump, rebar & air tests and testing at batch plant (per hour)	\$58.00
Engineering Technician Services Overtime (in excess of 8 hours per day) (per hour)	\$87.00
Specimen pick-up (4 hour minimum) (per hour)	\$58.00
Vehicle Trip Charge (per trip)	\$100.00
Laboratory compression testing and reporting of concrete cylinders (each)	\$22.00
Reserve concrete cylinders not tested (each)	\$22.00
Engineering Review (per hour)	\$150.00

**UES Professional Solutions 44, LLC**  
**GENERAL CONDITIONS – TEXAS**

**SECTION 1: SCOPE OF SERVICES**

1.1 UES Professional Solutions 44, LLC (“UES”) will provide to Client the professional services described under the Scope of Services (“Services”) in the Professional Services Agreement (“Agreement”) between UES and Client to which these General Conditions form a part.

1.2 UES shall provide revised or additional services, including changes to the Services necessary due to changed or unforeseen conditions, only in accordance with a written Addendum or Change Order (collectively, “Addendum”) to the Agreement agreed to by UES and Client, and only to the extent set forth in that Addendum. Either UES or Client may communicate in writing any requested changes in the nature and scope of the Project; in either case, the changes shall only be executed upon written approval of the Addendum by UES and Client.

1.3 Unless otherwise provided for in the Agreement, the Services will be provided on a standard work schedule of Monday through Friday 8:00 AM to 5:00 PM (excluding holidays), and samples will be analyzed on a standard five (5) to seven (7) business day laboratory turnaround time.

1.4 UES shall not be responsible for any delays, fees or costs associated with adverse or unusual weather conditions that prevent the Services from being safely conducted.

1.5 UES shall provide the personnel, equipment, Level D personal protective equipment (as defined by the Occupational Safety and Health Administration (“OSHA”)), and other materials necessary to provide the Services. UES, at its sole discretion, may retain subcontractors or other third-parties to assist it in the provision of the Services.

1.6 Client will provide UES with written authorization to proceed with the Services and any associated fee (e.g., retainer) prior to UES initiating work on the Services.

1.7 The terms “Project” and “Site” are used interchangeably in these General Conditions refer to the land and/or construction project on which or to which UES is to provide Services under this Agreement.

1.8 UES shall perform all Services hereunder as an independent contractor, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant, or employer and employee between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party. UES also agrees not to be treated, or seek to be treated, as an employee of Client for any purpose, including for the purposes of fringe benefits provided by Client, or for disability income, social security taxes and benefits, Federal unemployment compensation taxes, State unemployment insurance benefits and Federal income tax withholding at sources. UES hereby represents that UES has and at all times will maintain timely payments of all taxes due to the Internal Revenue Service and all other government agencies, including withholding and all other taxes.

**SECTION 2: PROFESSIONAL STANDARD OF CARE**

2.1 UES will provide its services under this Agreement in a manner consistent with the level of professional care and skill ordinarily exercised by similar professionals practicing contemporaneously under similar conditions in the locality of the Project. NO OTHER WARRANTY CONCERNING THE SERVICES UES PROVIDES UNDER THE AGREEMENT OR ANY ADDENDUM, EXPRESS OR IMPLIED, IS MADE, AND ALL OTHER WARRANTIES, INCLUDING THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW.

2.2 Client understands that subsurface investigations may involve drilling, boring, excavating or sampling through varied subsurface soil and water strata which, consistent with the prevailing standard of professional care, may result in the unavoidable or inadvertent cross-mingling of soil and water and any Hazardous Substances or constituents contained in them, and that this risk cannot be eliminated despite the exercise of professional care. IF SUCH SUBSURFACE INVESTIGATIONS ARE PART OF THE SERVICES, CLIENT WAIVES ANY CLAIM AGAINST UES, AND SHALL INDEMNIFY, DEFEND, AND HOLD UES HARMLESS FROM ANY CLAIM OR LIABILITY FOR INJURY OR LOSS ARISING FROM CROSS-CONTAMINATION RELATED TO SUCH SUBSURFACE EXPLORATIONS INCLUDING, WITHOUT LIMITATION, ANY CLAIM OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

2.3 UES will take reasonable precautions to minimize damage to the Site, but it is understood by Client that, in the normal course of the provision of the Services, including sampling or drilling, some damage to or alteration of the Site is possible. The repair of such damage shall not be part of the Services unless explicitly specified in writing in the Agreement.

2.4 The Services provided by UES are not intended to be and shall not be construed as providing legal advice, and UES shall not be responsible for Client’s compliance with any applicable laws.

2.5 Client and Client’s personnel and contractors shall promptly inform UES of any actual or suspected defects in UES’s services, to help UES take those prompt and effective measures that in UES’s opinion will help minimize the consequences of any such defect. Client’s payment in full of the amount owed for services rendered shall be taken to mean that Client is satisfied with and has accepted UES’s services.

**SECTION 3: SITE ACCESS, SITE CONDITIONS AND CLIENT RESPONSIBILITIES**

3.1 Client will grant or obtain at its expense lawful and safe access to the Site as needed for UES to perform the Services and will notify all affected persons and entities in writing of UES’s presence. The access shall be adequate to allow UES to conduct the Services, including bringing and storing equipment and tools on the Site and any necessary access to exterior and interior areas. UES shall not be responsible for any delays, fees or costs caused by delayed or restricted access that prevents or slows the delivery of the Services by UES.

3.2 If the Site is not owned or operated by Client or the Client does not otherwise have the authority to grant UES lawful access, Client shall be responsible for obtaining, at its own expense, an access agreement for the Site and shall provide UES a copy of such access agreement at least three business days in advance of the date contemplated for the first Site access related to the Project. UES reserves the right to delay, without penalty, any Site visit and the provision of Services under the Agreement if a site access agreement, in UES’ reasonable judgment and discretion, would impose conditions, liabilities or risks on UES in excess of those set forth in these General Conditions or the Agreement. IF THE SITE IS NOT OWNED BY CLIENT, CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES AND SUCCESSORS (“UES INDEMNITEES”) HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES (INCLUDING ATTORNEY’S FEES) ALLEGED BY THE SITE OWNER OR THE SITE OWNER’S EMPLOYEES, AGENTS, CONTRACTORS OR OTHER PERSONS OR ENTITIES ARISING FROM UES’S PERFORMANCE OF SERVICES UNDER THE AGREEMENT AT SUCH SITE INCLUDING, WITHOUT LIMITATION, ANY CLAIM, LOSS, DAMAGE OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

3.3 Unless otherwise expressly provided for in the Agreement, Client will be responsible for communicating and coordinating with the Site owner(s) with respect to access necessary to the provision of the Services, including security procedures, opening gates, providing access to buildings, avoiding conflicts between provision of the Services and any commercial or manufacturing activities on the Site, and moving vehicles or other equipment that may interfere with the agreed upon Site activities and the Site access necessary to conduct such activities, including opening gates to allow equipment to gain access to proposed work areas, areas to store necessary equipment, as well as access to the interiors of any onsite buildings.

3.4 Client shall be responsible for the safety of the Site where the Project is conducted and for providing a safe environment for UES to provide the Services. UES shall be responsible for the safe and compliant conduct of its personnel at the Site and shall also comply with the reasonable and lawful work rules for the Site. As required by applicable laws, UES will prepare a site-specific Health and Safety Plan (HASP) applicable to its personnel for the Services provided at the Site. UES shall not be responsible for the safety of other personnel at the Site, nor shall it be responsible for ensuring that the Site complies with environmental, health and safety laws, or reporting any unsafe conduct or non-compliance that it may observe. If UES encounters conditions at the Site that are unsafe for its personnel, it reserves the right at its sole discretion to suspend or halt work until such conditions are cured. UES shall not be responsible for any fees, costs or damages associated with any safety-related delays. Unless otherwise provided for in the Agreement, UES shall not work in conditions that require personal protective equipment beyond that classified as Level D by OSHA.

3.5 Client shall inform UES of any reporting or other requirements imposed by any third parties, such as federal, state, or local entities with respect to environmental matters relevant to the Services, Client shall assume responsibility to provide any required notice to any third party, and it shall secure the necessary permits or permissions from any third parties (including governmental authorities) required for UES's provision of the Services. If included in the Agreement, Client may authorize UES to obtain certain permits on Client's behalf, in which case Client shall be responsible for any fees or expenses incurred by UES with respect to obtaining such permits.

3.6 Client shall provide UES with all necessary information to perform its services, including, but not limited to, maps, site plans, reports, surveys, plans and specifications, environmental and hydrogeological investigations and studies, other designs, documents, and any other existing environmental information about the Site. Client assumes all liability for information not provided to UES that could affect the quality or sufficiency of the Services UES provides. If UES encounters undisclosed or unforeseen conditions that may cause material delays or an increase in fees or costs, UES shall inform Client and any changes in schedule, fees or costs shall be addressed in an Addendum. UES shall not be responsible for any delays, fees or costs caused by undisclosed or unforeseen conditions.

3.7 Client is responsible for accurately identifying to UES in writing the existence and location of all subterranean structures and utilities on or affecting the Site (including the type and location of utility lines) and the services to be provided by UES. UES will take reasonable precautions to avoid affecting subterranean structures and utilities disclosed to it in writing by Client. If included in the Agreement, Client may authorize UES to conduct applicable public utility identification and clearance requirements on behalf of Client. CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES INDEMNITEES HARMLESS FOR ANY CLAIMS, LOSSES, DAMAGES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES ARISING FROM DAMAGE DONE TO ANY SUBTERRANEAN STRUCTURES OR UTILITIES, OR FOR THE RELEASE OF ANY HAZARDOUS SUBSTANCES FROM ANY SUCH STRUCTURES OR UTILITIES, THAT ARE NOT ACCURATELY IDENTIFIED AND LOCATED IN WRITING AND DISCLOSED TO UES BY CLIENT BEFORE UES COMMENCES ITS WORK INCLUDING, WITHOUT LIMITATION, ANY CLAIM, LOSS, DAMAGE OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

3.8 Unless otherwise stated in the Agreement, any soil or groundwater monitoring activities that are included in the Services are based on the assumption that soil borings and monitoring wells can be installed using standard truck-mounted drilling equipment, the locations are accessible to such equipment, and that surface conditions at each location consists of non-reinforced asphalt or concrete not exceeding six (6) inches in thickness and no concrete or asphalt cutting will be required. If UES encounters materially different conditions at the Site, UES shall inform Client and an Addendum shall be agreed to that addresses any changes in schedule, fees or costs associated with the changed conditions.

#### SECTION 4: HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CONDITIONS

4.1 Client represents it has informed UES of all known or suspected Hazardous Substances on, under or near the Site of which it is aware, and that it has provided UES with all studies, reports, investigations, or similar documents in its possession about the environmental conditions at the Site, including any documents and correspondence involving Federal, State or local environmental, health or safety regulatory notifications.

4.2 For purposes of the Agreement and these General Conditions, the term "Hazardous Substances" includes materials defined or regulated as hazardous substances, hazardous materials, hazardous wastes, hazardous constituents, solid wastes, pollutants, or toxic substances under any Federal, State or local environmental, health, safety or natural resources law, statute, regulation or ordinance, including but not limited to petroleum products, polychlorinated biphenyls, per- and polyfluoroalkyl substances, asbestos, and any other material or substance listed or identified by the United States Environmental Protection Agency or any similar State or local agency as presenting a potential danger to health, safety or the environment.

4.3 Except to the extent required by law, UES shall not be responsible for making any disclosures to governmental agencies or the Site owner regarding the presence or release of Hazardous Substances on, under, from or around a Site.

4.4 [FOR INVESTIGATION / REMEDIATION PROJECTS] The discovery of Hazardous Substances or other environmental conditions on, under or near the Site not contemplated within the Services may constitute a changed condition, necessitating an Addendum or Change Order. In the event of the discovery of Hazardous Substances or other environmental conditions not contemplated within the Services, Client agrees to compensate UES for all expenses incurred or caused by the discovery, including but not limited to those related to worker protection and exposure, emergency response actions and equipment decontamination.

[FOR GEOTECH PROJECTS ONLY] Client agrees that the discovery of Hazardous Substances or other environmental conditions on, under or near the Site not contemplated within the Services may constitute a changed condition, necessitating an Addendum or Change Order. Although unlikely, Client acknowledges that such a discovery may make it necessary for UES to take immediate measures to protect the health and safety of its employees and other persons, or to arrange for others to do so, including and up to delaying or terminating work. Client agrees to compensate UES for all expenses incurred or caused by the discovery of unanticipated Hazardous Substances or environmental conditions encountered at the Site, including but not limited to those related to worker protection and exposure, emergency response actions and equipment decontamination.

4.5 [FOR INVESTIGATION / REMEDIATION PROJECTS] All substances on, in, or under Client's site, or obtained from Client's site as samples or as byproducts of the sampling process, shall be Client's property. UES shall not be required to sign or certify a waste manifest, disposal ticket, or similar document relating to the transportation or disposal of wastes or Hazardous Substances. UES may serve as Agent for Client if requested under a separate agreement and authorization. Client shall be considered the "generator" of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* and agrees that it shall assume all duties as "generator" of any waste material associated with the Services. Further, Client agrees that UES is not a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances and shall not be so identified on any document.

[FOR GEOTECH PROJECTS] All substances on, in, or under Client's site, or obtained from Client's site as samples or as byproducts of the sampling process, shall be Client's property. Unless otherwise expressly specified in the Agreement or the Services, the characterization, management and disposition of substances, including Hazardous Substances, generated during the Services (including, but not limited to, wastes, samples, produced soils or fluids, cuttings, or protective gear or equipment, etc.) is the sole responsibility of Client. Client shall be considered the "generator" of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* and agrees that it shall assume all duties as "generator" of any waste material associated with the Services. Further, Client agrees that UES is not and shall not be identified as a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances on any document. Unless specifically provided for in the Agreement, UES shall not have any responsibility

with respect to the storage or preservation of samples, and Client agrees that UES is not responsible or liable to Client for any loss of samples that are shipped to a testing facility or retained in storage.

4.6 UES shall not have custody of any monitoring wells or permanent sampling locations installed as part of the Project, and shall not be responsible for proper maintenance, repair, or closure of such wells, unless otherwise provided for in the Agreement.

4.7 CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES (INCLUDING ATTORNEY'S FEES AND CONSULTANTS' FEES, COSTS OF DELAY OF THE SERVICES, AND ANY COSTS ASSOCIATED WITH POSSIBLE REDUCTION TO THE VALUE OF THE PROJECT OR THE SITE IN WHICH IT IS SITUATED) ARISING FROM (I) UES' DISCOVERY OF OR ITS EMPLOYEES' OR SUBCONTRACTORS' EXPOSURE TO HAZARDOUS SUBSTANCES OR SUSPECTED SUBSTANCES RELATED TO THE SERVICES, TO THE EXTENT CAUSED BY CLIENT'S NEGLIGENCE OR WILLFUL MISCONDUCT; (II) ANY DISCLOSURES UES IS REQUIRED TO MAKE BY LAW REGARDING HAZARDOUS SUBSTANCES OR ENVIRONMENTAL CONDITIONS AT A SITE; (III) ANY CLAIMS MADE ALLEGING THAT (A) UES IS AN OWNER OR OPERATOR OF THE SITE AT WHICH THE SERVICES ARE RENDERED; (B) UES IS THE GENERATOR, STORER OR TREATER OF HAZARDOUS SUBSTANCES AT SUCH SITE; OR (C) THAT UES ARRANGED FOR THE TRANSPORTATION OR DISPOSAL OF ANY HAZARDOUS SUBSTANCES FROM THE SITE; (IV) ANY VIOLATION BY CLIENT OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, ORDER, DECREE OR ORDINANCE RELATED TO HAZARDOUS SUBSTANCES; OR (V) ANY CLAIMS MADE BY THIRD-PARTIES WITH RESPECT TO ALLEGED EXPOSURES TO OR DAMAGES CAUSED BY HAZARDOUS SUBSTANCES AT OR FROM THE SITE OR DURING OR RELATED TO ANY PROJECT OR THE PROVISION OF SERVICES, TO THE EXTENT CAUSED BY CLIENT'S NEGLIGENCE OR WILLFUL MISCONDUCT.

#### **SECTION 5: BILLING AND PAYMENT**

5.1 UES will submit invoices to Client in accordance with the Agreement for the specific Project. If the Agreement includes a retainer, the retainer must be received by UES before it will initiate work on the Project.

5.2 Payment will be due 30 days after presentation of invoice. Client will pay a finance charge of one and one-half percent (1 1/2 %) per month, or the maximum rate allowed by law, on all past due invoices. If UES incurs any expenses to collect overdue invoices, Client will also be liable for all sums incurred for reasonable attorneys' fees, expert witness fees, time of UES's employees, expenses and court costs, and interest.

5.3 Client agrees that UES may refuse to release to Client any reports, findings, data and other work product until it has been paid in full for services rendered. UES reserves, and does not waive, any lien rights it may have for unpaid professional services. Client agrees that all reports and other work furnished to Client or its agents that Client has not timely paid for will be returned upon demand and will not be used by the Client for any purpose.

5.4 UES shall have no obligation under this Agreement or any Addendum to provide expert consultant or expert witness services in litigation, arbitration, or any other dispute resolution proceeding, to produce its work product in discovery, to undertake any further investigation or analysis or prepare a report in connection with any such proceeding, or to make available for testimony its current or former employees or consultants. The Parties will execute a new agreement for any such services. In the absence of a new executed agreement for such services, Client will pay UES 150% of its prevailing rates and expenses for the time spent by UES employees and costs incurred on any such additional tasks.

5.5 Services provided at the Client's request outside normal business hours will be performed for an additional fee to be negotiated and reflected in the Agreement or an executed Addendum, or, if no such fee is negotiated, at 150% of UES standard rates.

5.6 Reimbursable expenses, those outside of the scope of the proposed services, are charged to the Client at cost plus fifteen (15) percent and include the following items:

(i) Out of scope reproduction of plans, specifications and other documents, including plans and documents necessary for submission to regulatory agencies, but excluding documents reproduced for use by UES and any of its consultants.

(ii) Out of scope permit application and filing fees advanced by UES. Such fees will be invoiced to Client at cost.

(iii) The cost of equipment rental including, where applicable, equipment operators and subcontracted services, such as authorized photogrammetry, testing services, laboratory services, archeological services, and other specialized services, excluding those services which are explicitly included in the UES proposal. If the services covered by this Agreement are subject to local or state taxes or fees, such additional costs will be charged to the project and are subject to reimbursement as provided herein.

5.7 Fees and schedule commitments are subject to renegotiations for unreasonable delay caused by Client's failure to provide specified facilities or information, or for delays caused by unpredictable occurrences, or force majeure events such as fires, floods, strikes, riots, unavailability of labor or materials or services, acts of God or of public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above may result in additional costs (reflecting a change in scope) beyond that outlined in the proposed Agreement. UES shall have the right to increase its compensation payable by the Client to UES in the event that UES must modify services, facilities or equipment to comply with laws or regulations that become effective after execution of this Agreement, provided UES gives the Client fifteen (15) days prior notice as to the cause for escalation and the additional amounts involved.

5.8 The fees and charges reflected in UES's proposal for services are exclusive of any sales, use, personal property, value added and goods/services taxes. Where applicable, such taxes shall appear as a separate item on UES's invoice and Client shall be liable for the payment of such taxes to UES. Notwithstanding the foregoing, Client shall not be responsible for any foreign, federal, state or local taxes based on UES's net income or receipts, or such other taxes based on UES doing business in any particular jurisdiction.

#### **SECTION 6: INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

6.1 All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES during the provision of the Services, are instruments of service, and shall remain the property of UES. Neither Client nor any other entity shall change or modify UES's instruments of service. UES shall retain sole and exclusive ownership of all ideas, concepts, theories, improvements, designs, original works of authorship, formulas, processes, models, software, algorithms, inventions, know-how, techniques, compositions of matter and any other information owned by UES prior to the date of this Agreement or created or modified by UES during the provision of the Services.

6.2 UES will retain final reports generated as part of the Services for a period of at least five years following submission of such reports or completion of the Services, whichever is later. UES will make those records available to the Client in a reasonable time and manner, subject to payment of a reasonable fee for the time of UES employees to assemble and transmit those documents.

6.3 The Services and all deliverables provided as part of the Services (including but not limited to reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES), are prepared for the sole and exclusive use of Client, and Client is the only entity to which UES owes any duty, in contract or tort, pursuant to any law or under this Agreement. Any information or deliverables generated by UES during the provision of the Services may not be given or disclosed to any other entity, or used or relied upon by any other entity, without the express written consent of UES. Such written consent may take the form of a "reliance letter" which must be agreed to by such other person or entity to whom the Services and Deliverables may be disclosed, and for which a separate fee will be charged. UES shall be entitled to injunctive relief preventing/prohibiting any disclosure, reliance or attribution prohibited hereunder, and Client shall release, indemnify, defend, and hold harmless UES from any losses (including attorney's fees) arising from or related to such unauthorized disclosure, attribution or reliance.



6.4 Each party may disclose to the other party certain information that it considers to be confidential ("Confidential Information") provided such information is disclosed in writing and clearly marked or, if orally disclosed, promptly thereafter reduced to writing and clearly marked "Confidential." In no event shall Confidential Information include information that: (a) is or becomes publicly available other than through a breach of the Agreement; (b) is known to the party receiving such information prior to disclosure or is independently developed by such party subsequent to such disclosure without reference to Confidential Information provided hereunder; or (c) is subsequently lawfully obtained by the party receiving such information from a third party without obligations of confidentiality. Each party agrees that it (a) will not disclose or divulge the other party's Confidential Information to any person, (b) will not use the other party's Confidential Information for its own benefit or the benefit of others, (c) will employ at least the same degree of care in protecting Confidential Information as it employs in protecting its own confidential information, and (d) will, upon termination of the Agreement, or at any time at the request of the other party, return to the other party or destroy all copies of the other party's Confidential Information. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information to its employees, subcontractors and authorized agents who have a need to know such confidential information to fulfill its obligations under this Agreement. In the event a party receives a subpoena or other validly issued administrative or judicial process requesting the disclosure of the other party's Confidential Information, such party will promptly notify the other party and tender to it the defense of such demand and will cooperate (at the other party's expense) with the defense of such demand. Unless the demand shall have been timely quashed or extended, the party receiving the demand shall thereafter be entitled to comply with such demand when and to the extent required by law.

#### **SECTION 7: RISK ALLOCATION**

7.1 CLIENT AGREES WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT AND ANY ADDENDUM THAT THE AGGREGATE LIABILITY OF UES FOR ANY AND ALL CLAIMS, LOSSES, COSTS, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES, SHALL NOT EXCEED THE GREATER OF \$50,000.00 OR THE FEE ACTUALLY PAID BY CLIENT TO UES FOR THE SERVICES. IN CONSIDERATION FOR PAYMENT BY THE CLIENT OF AN ADDITIONAL SUM OF \$1,000, UES AGREES THAT ITS AGGREGATE LIABILITY WITH RESPECT TO ANY AND ALL CLAIMS, LOSSES, COSTS, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES, ARISING FROM SERVICES PROVIDED UNDER THIS AGREEMENT AND ANY ADDENDUM THERETO SHALL BE THE GREATER OF \$50,000 OR UP TO \$1,000,000 IN COVERAGE BY ITS PROFESSIONAL LIABILITY POLICY (INCLUDING ANY DEDUCTIBLE OR SELF INSURED RETENTION). The terms "claim" or "claims" mean any claim in contract, tort, or statute alleging errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligence, negligent misrepresentation, and any other basis giving rise to liability in law or equity.

7.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY PROVIDED FOR IN THE AGREEMENT OR ANY ADDENDUM, UES SHALL NOT BE LIABLE TO CLIENT FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO REDUCTION IN VALUE OF REAL PROPERTY, PENALTIES ASSOCIATED WITH NON-COMPLIANCE WITH LAW, LOST PROFITS, LOSS OF USE, FINANCING COSTS AND LOST SAVINGS) INCURRED BY CLIENT. ITS EMPLOYEES, CONSULTANTS, AGENTS, CONTRACTORS OR SUBCONTRACTORS.

7.3 Client agrees that it will not seek damages in excess of this contractually agreed-upon limitation against any other person or entity who may in turn join UES as a third-party defendant for such damages, or where such person or entity may seek recovery from UES in a separate proceeding. CLIENT SHALL INDEMNIFY, DEFEND AND HOLD UES INDEMNITEES HARMLESS FOR ANY SUCH DAMAGES (INCLUDING ATTORNEY'S FEES) AWARDED TO ANY OTHER PERSON OR ENTITY AS A RESULT OF ANY LITIGATION, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING COMMENCED BY CLIENT AGAINST ANY SUCH PERSON OR ENTITY FOR DAMAGES FOR WHICH UES MAY BE IN WHOLE OR PART BE HELD LIABLE INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

#### **SECTION 8: INSURANCE**

8.1 UES represents it has Worker's Compensation insurance in force, that is has commercial general liability coverage in the amount of \$1,000,000.00 and has professional liability insurance in the amount of \$1,000,000.00.

8.2 Client shall maintain such insurance as is necessary to fully underwrite Client's defense and indemnity obligations set forth herein, and shall, upon request by UES, provide proof to UES to verify such insurance.

#### **SECTION 9: INDEMNITY**

9.1 IN ADDITION TO AND NOTWITHSTANDING ANY OTHER PROVISION IN THESE GENERAL CONDITIONS, CLIENT AGREES, TO THE FULLEST EXTENT PROVIDED BY LAW, TO RELEASE, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO UES), INDEMNIFY, AND HOLD UES, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES AND SUCCESSORS ("UES INDEMNITEES") HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES FROM OR BY ANY PERSON OR ENTITY ARISING FROM (1) ACTS OR OMISSIONS BY CLIENT, CLIENT'S AGENTS, STAFF, AND OTHERS EMPLOYED BY OR CONTRACTED TO CLIENT, INCLUDING ARCHITECTS, ENGINEERS, CONTRACTORS, SUBCONTRACTORS, AND CONSULTANTS, WHETHER OR NOT UES IS RESPONSIBLE IN WHOLE OR IN PART FOR THE ACTS OR OMISSIONS FOR WHICH CLIENT IS INDEMNIFYING UES AND (2) THE PROVISION OF THE SERVICES BY UES EXCEPT TO THE EXTENT CAUSED BY UES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SUCH EXCEPTION SUBJECT TO THE LIMITS SET FORTH IN SECTION 7. FOR THE AVOIDANCE OF DOUBT, CLIENT'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 9.1 INCLUDE, WITHOUT LIMITATION, INDEMNIFICATION FOR ANY CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

9.2 UES AGREES TO INDEMNIFY, AND HOLD CLIENT HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING TO THE EXTENT SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY UES IN THE PROVISION OF THE SERVICES, SUBJECT TO THE LIMITS SET FORTH IN SECTION 7.

9.3 To the extent either party's damages are covered by available insurance, Client and UES waive all rights of subrogation against each other and against the contractors, subcontractors, consultants, agents, and employees of the other, except such rights as they may have to the proceeds of such insurance.

#### **SECTION 10: DISPUTE RESOLUTION**

10.1 All claims, disputes, and other matters in controversy between UES and Client arising out of or in any way related to this Agreement or any Addendum shall be decided by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, UES shall not be required to arbitrate any legal and/or equitable claims (including statutory and equitable liens) for collection of monies due. The successful party in any such action will be entitled to recover its reasonable attorneys' fees, expert witness fees, and other claim-related expenses and court costs incurred, and also the time value at prevailing rates of its employees reasonably incurred in prosecuting or defending the claims, with any claims against UES subject to the limitations in Section 7.

10.2 Notwithstanding the foregoing, all claims, including for negligence or any other cause whatsoever that the Client has or claims to have against UES, shall be deemed waived unless (i) Client notifies UES of the claim or claims within thirty (30) days of discovery thereof, and (ii) if

contends that a claim exists against UES for negligence or another violation of a standard of care owed by UES, Client has first provided UES with a written certification executed by an independent design professional currently practicing in the same discipline as UES. The certification shall: a) identify the name of the professional; b) specify each and every act or omission that the certifier contends is a violation of the standard of care identified in the Proposal Agreement; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to UES not less than thirty (30) calendar days prior to the institution of any arbitration or judicial proceeding.

10.3 NOTWITHSTANDING THE FOREGOING, UES SHALL HAVE NO LIABILITY FOR ANY CLAIM DISCOVERED BY CLIENT MORE THAN ONE YEAR AFTER DELIVERY OF THE LAST ISSUED REPORT BY UES FOR THE SERVICES DESCRIBED IN THE PROPOSAL AGREEMENT.

#### **SECTION 11: TERMINATION**

11.1 This Agreement may be terminated by either party for cause upon seven (7) days written notice and opportunity to cure in the event of a material breach by the other party, or in the case of a force majeure event such as terrorism, act of war, riot, insurrection, strike, declared public health emergency, flood, unusual weather condition, or act of God that continues or affects the Site for more than seven (7) calendar days. Such termination shall not be effective if such material breach or force majeure event has been remedied before expiration of the period specified in the written notice. In the event of any termination, UES shall be paid for Services (including any related costs and expenses) performed up to the termination notice date plus reasonable termination expenses.

11.2 UES and Client may terminate this Agreement at any time by mutual written consent.

11.3 In the event of termination or a suspension for more than three months of the Project for which these Services are to be provided, UES may in its sole discretion complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs incurred by UES in completing such analyses, records, and reports.

#### **SECTION 12: REVIEWS, INSPECTIONS, TESTING, AND OBSERVATIONS**

12.1 If the Services include oversight, monitoring or observation of work being conducted by third parties (other than UES subcontractors), such services shall be conducted solely to determine that the work being overseen, monitored, or observed is in general conformity to the contractual requirements between Client and such third parties. Client shall have sole responsibility and authority to reject, suspend or stop the work of such third parties, or modify or terminate any agreement between Client and such third parties.

12.2 UES shall not have the responsibility or authority to stop, suspend, or modify the work of such third parties, and does not guarantee that work it inspects conforms in all respects to the design, or to applicable laws, statutes, regulations, rules or codes, and it shall have no liability for design or construction defects, or the failure of Client's designers or contractors to comply with their contractual obligations.

12.3 Neither the activities of UES pursuant to this Agreement, nor the presence of UES or its employees, representatives, or subcontractors on the Project Site, shall be construed to impose upon UES any responsibility for means or methods of work performance, superintendence, sequencing of construction, or safety or environmental conditions or compliance at the Project Site. Client acknowledges that Client or its contractor is solely responsible for Project jobsite safety and compliance with environmental, health and safety laws.

12.4 Client is responsible for scheduling all inspections and construction materials testing ("CMT") activities of UES. UES will not be responsible for tests and inspections that it does not perform due to Client's failure to timely schedule work.

12.5 Client shall at the time of execution of the Agreement provide UES with a proposed schedule for tests and inspections UES shall perform. Client will give reasonable notice of all changes to that schedule. UES shall not be required to conduct any tests or inspections on less than 72 hours written notice, nor after normal business hours or on weekends or holidays.

#### **SECTION 13: SOLICITATION OF EMPLOYEES**

Client agrees that during the term of the Agreement, and for a period of one (1) year after the last date on which UES has provided services hereunder, Client shall not, directly or indirectly, solicit or attempt to solicit for employment, or contract directly or indirectly with, any employee of UES except as authorized in writing by UES. Client agrees that its breach of this Section shall cause UES irreparable harm, and that UES may, in addition to recovering any provable damages, enforce this obligation by injunction.

#### **SECTION 14: NO ASSIGNMENT**

Neither Client nor UES may delegate, assign or transfer its rights or obligations under the Agreement for any reason without the written consent of the other party. For avoidance of doubt, this provision does not affect UES' right, at its sole discretion, to use contractors or subcontractors in the performance and delivery of the Services.

#### **SECTION 15: GOVERNING LAW**

15.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the conflict of laws provisions of the State of Texas to the extent such principles or rules would require or permit the application of the laws of any other jurisdiction.

15.2 If any of the provisions of this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired and will survive. Limitations of liability and indemnities provided for will survive termination of this Agreement for the period of all applicable statutes of limitations to which they relate.

15.3 **WITH RESPECT TO CLIENT'S INDEMNIFICATION OBLIGATIONS HEREUNDER, THESE TERMS AND CONDITIONS COMPLY WITH THE REQUIREMENT, KNOWN AS THE EXPRESS NEGLIGENCE RULE, TO EXPRESSLY STATE IN A CONSPICUOUS MANNER TO AFFORD FAIR AND ADEQUATE NOTICE THAT THESE TERMS AND CONDITIONS CONTAIN PROVISIONS REQUIRING ONE PARTY TO BE RESPONSIBLE FOR THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANOTHER PARTY.**

#### **SECTION 16: INTEGRATED AGREEMENT**

16.1 This Agreement, and any Addendum represent and contain the entire and only agreement and understanding among the parties with respect to the subject matter of their subject matter, and they supersede all prior or contemporaneous oral and written agreements, understandings, representations, inducements, promises, communications, and conditions between the parties. No agreement, understanding, representation, inducement, promise, or condition with respect to the subject matter of this Agreement shall be relied upon by the parties unless expressly incorporated herein.

16.2 In the event any provision of the Agreement or these General Conditions shall be invalid, illegal or unenforceable in any respect, such a provision shall be considered separate and severable from the remaining provisions of this Agreement, and the validity, legality or enforceability of any of the remaining provisions of this Agreement shall not be affected or impaired by such provision in any way.

#### **SECTION 17: NO AMENDMENT**

17.1 The Agreement, including these General Conditions, may not be amended, or modified except by a writing signed by both parties.



17.2 Failure by either party at any time to enforce any obligation by the other party, to claim a breach of any term of the Agreement or to exercise any power agreed to hereunder will not be construed as a waiver of any right, power or obligation under the Agreement, will not affect any subsequent breach, and will not prejudice either party as regards any subsequent action.

**SECTION 18: WAIVER OF JURY TRIAL**

Both Client and UES waive trial by jury in any action arising out of or related to the Agreement, and any Addendum to the Agreement.

**SECTION 19: CONTRACTUAL STATUTE OF LIMITATIONS**

To the extent that a statute of limitations for any cause of action against UES arising from this Agreement or any Addendum can be modified contractually in accordance with law, and the relevant statute of limitations for any claim arising of or relating to any this Agreement or any Addendum, or the services provided by UES thereunder, is greater than two (2) years, the relevant statute of limitations shall be two (2) years from the date UES last provided services thereunder. The parties agree that this provision is material to the decision of UES to enter into this agreement, that it is a reasonable measure to allocate and insure against risk, and that it does not violate public policy. This section shall not be construed as an agreement to increase the statute of limitations for any causes of action that are otherwise barred by law.

**SECTION 20: HEADINGS**

The headings in these General Conditions are for reference only and are not intended to form part of the contract between the Parties.

REVISED: 3/7/24

# City Council Meeting

## Agenda Item

### Data Sheet

Meeting Date: April 21, 2025

#### Topic:

Workshop Discussion Only – Approve Supplemental Number Three, amending the Professional Services Agreement with Freese & Nichols, Inc. for Project Number 2019-10008, FM 2920 Lift Station Consolidation project, in the amount of \$176,021, for a total contract amount not-to-exceed \$2,394,179, approve the expenditure of funds therefor, and authorize the City Manager to execute any and all documents related to the purchases. This expenditure is included in the Fiscal Year 2024-2025 Capital Improvement Budget.

#### Background:

In November 2022, the City entered into a professional services agreement with Freese & Nichols, Inc. to complete the design and oversee construction of the FM 2920 Lift Station Consolidation project. The project was identified as an effort to expand the capacity of the wastewater collection system on the southwest side of the City. The existing FM 2920 lift station does not have the capacity for future development needs and therefore, alternatives to expand the lift station and force main were evaluated and the recommendation was made to the decommission the existing lift station and flow by gravity exclusively.

The professional services agreement with Freese & Nichols, Inc. (FNI) included a scope of work to complete a route study and evaluate the two proposed options for the wastewater collection system, design the project based on the best option, and oversee construction, for a not-to-exceed amount of \$2,206,200. Supplemental number three to the professional services agreement includes the addition of work for the following tasks:

**1. Resident Project Representation – \$32,271**

- a. Provide construction management for construction phase due to City staffing changes.

**2. Easement Legal Description and Exhibit Preparation – \$34,500**

- a. Additional effort related to the preparation and acquisition of easements relating to Harris County and Harris County Flood Control District, private owners, and adjustment of alignment as required.

**3. Construction Material Testing – \$109,250**

- a. Coordination of material testing laboratory for the testing of compacted soils and concrete.

The proposed supplemental increases the total contract amount by \$176,021, for a not-to-exceed contract amount of \$2,394,179. This project was included in the FY 2024-2025 Capital Improvement Budget as an on-going capital project as part of the Certificate of Obligation issuance.

FM 2920 Lift Station Consolidation Project Budget Breakdown		
Project Element	Total Contract	Remaining Contract
Acquisition Services (Threshold Land Acquisition)	\$77,646.28	\$71,046.28
Acquisition – Easement	\$401,644.72	\$319,567.92
Appraisal Services (Newmark)	\$42,000	\$3,000.00
Engineering (Preliminary) – Oller Engineering	\$18,609.65	\$0.00
Engineering (Design) – Freese & Nicols	\$2,394,179.00	\$1,422,124.90
Construction – Pate Garver	\$5,284,286.50	\$4,885,144.00
Construction Estimate – Phase II (pending)*	\$7,484,996.77	N/A
<b>Project Budget \$15,474,100</b>	<b>Total Contracts \$15,474,100</b>	<b>Remaining Funding \$7,487,996.77</b>

\*Bid Pending

While this addendum increases the total contract cost to Freese & Nichols there were additional addendums for Baker Drive Water Plant and East Water Plant that offset the requested increase to the FM 2920 Lift Station Consolidation project.

This item approves supplemental number three with Freese & Nichols, Inc. amending the professional services agreement in the amount of \$176,021, for a total contract amount not-to-exceed \$2,394,179.

**Origination:** Project Management

**Recommendation:**

Staff recommends approving supplemental number three with Freese & Nichols, Inc. amending the professional services agreement in the amount of \$176,021, for a total contract amount not-to-exceed \$2,394,179.

**Party(ies) responsible for placing this item on agenda:** Meagan Mageo, Project Manager

**FUNDING (IF APPLICABLE)**

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, specify Account Number: #400-614-6409

If no, funds will be transferred from account # \_\_\_\_\_ To account # \_\_\_\_\_

Signed Meagan Mageo Approved by \_\_\_\_\_  
 Staff Member Date City Manager Date

**SUPPLEMENTAL NO. 3  
PROFESSIONAL SERVICES AGREEMENT  
FOR  
ENGINEERING SERVICES  
RELATED TO  
PROJECT NO. 2019-10008  
CITY OF TOMBALL  
FM 2920 SANITARY LIFT STATION CONSOLIDATION**

**THE STATE OF TEXAS           §  
   §  
COUNTY OF HARRIS         §**

THIS IS A SUPPLEMENTAL AGREEMENT amending an AGREEMENT between the CITY OF TOMBALL, TEXAS (the "City"), a municipal corporation of the State of Texas, and Freese & Nichols, Inc. ("Engineer"), executed the \_\_\_\_ day of May 2025, relative to the addition of work for the following tasks:

- 1. Resident Project Representation - \$32,271 (not-to-exceed)**
  - a. Provide Construction Management for construction phase due to City staffing changes
- 2. Easement Legal Description and Exhibit Preparation - \$34,500 (not-to-exceed)**
  - a. Additional effort related to the preparation and acquisition of easements relating to Harris County and Harris County Flood Control District, private owners, and adjustment of alignment as required.
- 3. Construction Material Testing - \$109,250 (not-to-exceed)**
  - a. Coordination of material testing laboratory for the testing of compacted soils and concrete.

**WITNESSETH:**

WHEREAS, the City desires to execute a supplemental amendment to the Professional Services Agreement for services related to the FM 2920 Lift Station Consolidation project (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to project planning and design, and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional services to the City related to professional engineering;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

## **SECTION I. SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional services as outlined and defined in the Proposal attached hereto as Exhibit A, and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Work," and for having rendered such services, the City agrees to pay Engineer compensation as stated in the Section VII.

## **SECTION II. CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Work in a manner consistent with the professional skill and care ordinarily provided by competent engineering practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior approval of the City. The City shall be under no obligation to pay for services rendered not identified in Exhibit "A" without prior written authorization from the City.

## **SECTION III. OWNERSHIP OF WORK PRODUCT**

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same. It is further understood and agreed that ownership and usage rights associated with the above referenced documents and analyses, hereinafter referred to as instruments, are contingent upon Engineer's completion of the services which will result in the production of such instruments and Engineer's receipt of payment, in full, for said services. Additionally, City understands and agrees that the rights described and provided hereunder shall not preclude or prevent Engineer from continuing to use those processes, analyses and data.

## **SECTION IV. TIME FOR PERFORMANCE**

The time for performance is an estimated 1,200 calendar day duration beginning from the execution date of this Agreement. Upon written request of the Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the work must be coordinated and over which Engineer has no control.

**SECTION V.  
COMPLIANCE AND STANDARDS**

Engineer agrees to perform the work hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the work to be performed hereunder and Engineer's performance.

**SECTION VI.  
INDEMNIFICATION**

**To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.**

**SECTION VII.  
ENGINEER'S COMPENSATION**

For and in consideration of the services rendered by Consultant pursuant to this Agreement, the City shall pay Engineer only for the actual work performed under the Scope of Work, on the basis set forth in Exhibit "A," up to an amount not to exceed **\$176,021**, including reimbursable expenses as identified in Exhibit "A", for a total contract amount not to exceed **\$2,394,179**.

**SECTION VIII.  
INSURANCE**

Engineer shall procure and maintain insurance for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness, disease, or death, claims or damages because of injury to or destruction of property, including loss of use resulting therefrom, and claims of errors and omissions.

## **SECTION IX. TERMINATION**

The City may terminate this Agreement at any time by giving seven (7) days prior written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer 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 the charges as have been previously made. Copies of all completed or partially completed maps, studies, reports, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

## **SECTION X. ADDRESSES, NOTICES AND COMMUNICATIONS**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Consultant at the following address:

Freese & Nichols, Inc  
Attention: Richard Weatherly  
11200 Broadway Street, Suite 2320  
Pearland, Texas 77584

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Tomball  
Attn: Project Manager  
501 James Street  
Tomball, Texas 77375

## **SECTION XI. LIMIT OF APPROPRIATION**

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

**SECTION XII.  
SUCCESSORS AND ASSIGNS**

The City and Engineer 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. Neither the City nor Engineer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

**SECTION XIII.  
DISCLOSURE OF INFORMATION**

Engineer shall under no circumstances release any material or information developed in the performance of its services hereunder without the express written permission of the City.

**SECTION XIV.  
MODIFICATIONS**

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

**SECTION XV.  
ADDITIONAL SERVICES OF ENGINEER**

If authorized in writing by the City, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Exhibit "A". These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Exhibit "A," up to the amount authorized in writing by the City.

**SECTION XVI.  
CONFLICTS OF INTEREST**

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Consultant shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.



**SECTION XVII.  
PAYMENT TO ENGINEER FOR SERVICES AND  
REIMBURSABLE EXPENSES**

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

**XVIII.  
MISCELLANEOUS PROVISIONS**

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2250 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence or performance by Engineer or of the receipt of or acceptance by the City of the work covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Harris County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Engineer further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

E. In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the Engineer covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Engineer is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

F. In accordance with Chapter 2274 of the Texas Government Code, Engineer covenants that it: (1) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this contract against a firearm entity or firearm trade associations.

IN WITNESS WHEREOF, the City of Tomball, Texas, has lawfully caused this Agreement to be executed by its Mayor; and Engineer, acting by its duly authorized officer/representative does now sign, execute and deliver this instrument.

EXECUTED on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Company Name: Freese & Nichols, Inc.**

*Richard Weatherly*

Name: Richard Weatherly, PE

Title: Vice President

**CITY OF TOMBALL, TEXAS**

\_\_\_\_\_  
David Esquivel, City Manager

ATTEST:

\_\_\_\_\_  
Shannon Bennett, Assistant City Secretary

# EXHIBIT A



CITY OF TOMBALL, TX

501 James Street

Tomball, Texas 77375

## PROFESSIONAL SERVICES AGREEMENT

### AMENDMENT #3

FNI Project: TMB22900

Client Contract: 2019-10008

Date: 3/31/2025

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**Project Name:** FM 2920 LIFT STATION IMPROVEMENTS

**Description of Services:** Perform additional Easements for Phase 2 on a not to exceed fee of \$34,500. Include construction materials testing on a not to exceed fee of \$109,250.  
Increase the CMI effort in \$32,271  
Total increase fee of \$176,021

**Deliverables:** Easements for Phase 1 and 2

**Schedule:** Easements: 2 Weeks after notice to proceed has been received.

**Compensation Type:** Not to Exceed Fee

**Current Contract Amount:** \$2,218,158

**Amount of this Amendment:** \$176,021

**Revised Total Amount Authorized:** \$2,394,179

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*The services described above shall proceed as amended upon execution of this Amendment. All other provisions, terms, and conditions of the Professional Services Agreement which are not expressly amended shall remain in full force and effect.*

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CITY OF TOMBALL, TX

FREESE AND NICHOLS, INC.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: David Esquivel

Name: Jason Ward

Title: City Manager

Title: Vice President

Date: \_\_\_\_\_

Date: 4/1/2025

**Attachment A**  
**City of Tomball**  
**FM 2920 Lift Station Improvements**  
**Final Design Amendment 3**  
Engineering Scope of Services  
March 31, 2025

**PROJECT UNDERSTANDING:**

The FM 2920 Lift Station Consolidation project is part of the City of Tomball's effort to expand capacity of the wastewater collection system to their existing WWTP on the southwest side of town. The existing collection system includes a 30-inch sanitary sewer along Holderrieth Road from the South WWTP to a manhole and stub-out west of SH 249. The existing FM 2920 lift station does not have the capacity for future development needs. Following an alternatives analysis it was determined that a proposed 15,500 linear feet of 30/24-inch sanitary sewer would be installed along Holderrieth Road from SH 249 west to Calvert Road, turning north along Calvert Road until N Humble Lake Road intersection and heading northwest paralleling through private property until reaching Treichel Road and turning north along Treichel Road to Waller-Tomball Road, and then west along Waller-Tomball Road to the existing FM 2920 lift station.

This project included an alternative route study to evaluate the route that provides the best value to the City, detailed design of the selected route, bid phase services, and general construction representation services. Other special services include resident project representation, geotechnical investigation, topographic survey, easement preparation (if necessary), and environmental evaluation.

This amendment 3 incorporates an escalation on the effort to provide CMI services, additional effort related to metes and bounds required for both phases and the materials testing effort.

**Assumptions**

- Consolidation of the FM 2920 Lift Station will be by gravity sewer south to the stub out on Holderrieth
- The construction package will be issued as two separate bid packages.
- The construction will be procured using the design, bid, build method.
- *The project will include Materials Testing per the proposal provided in special services by the subcontractor UES*

**BASIC SERVICES:** Freese and Nichols, Inc. (FNI) may render the following professional services to the City of Tomball (OWNER) in connection with the project, described as: Wastewater Collection System – FM 2920 Lift Station Consolidation.

**TASK A: PROJECT MANAGEMENT**

**A1. Project Kickoff Meeting**

No change.

**A2. Project Management and Communication**

No change

**A3. Monthly Progress Meeting**

No change.

**A4. Quality Assurance/ Quality Control**

No change.

**A5. Coordinate Sub-consultant's Efforts**

No change.

**TASK B: ALTERNATE ROUTE STUDY**

**B1. Prepare Route Study**

Completed, No change.

**TASK C: DESIGN PHASE**

**C1. Prepare Plans and Specifications**

No change.

**C2. Permits**

No change.

**C3. OPCC**

No change.

**C4. Quality Control Review Meeting**

No change.

**C5. Texas Commission on Environmental Quality (TCEQ)**

No change.

**TASK D: BID OR PROPOSAL PHASE**

**D1. Securing Bids**

No change.

**D2. Conducting Pre-bid Conference**

No change.

**D3. Responding to Bid Questions**

No change.

**D4. Bid Opening**

No change.

**D5. Preparation of Construction Contract Documents**

No change.

**D6. Furnish Drawings and Specifications**

No change.

**TASK E: CONSTRUCTION PHASE**

No change.

**E1. Pre-construction Meeting**

No change.

**E2. Communication Procedures**

No change.

**E3. Project Documentation**

No change.

**E4. Payment Requests**

No change.

**E5. Site Visits**

No change.

**E6. Quality Review**

No change.

**E7. Coordinate Testing Laboratories**

No change.

**E8. Interpret Drawings and Specifications**

No change.

**E9. Administering Construction Contracts**

No change.

**E10. Documentation for Contract Modifications**

No change.

**E11. Owner Furnished Equipment or Materials**

No change.

**E12. Final Review**

No change.

**E13. Construction Drawings**

No change.

**TASK F: SPECIAL SERVICES**

**F1. Resident Project Representation**

The City will provide the services of a part-time on-site Construction Inspector / RPR (resident project representative). FNI will provide a construction manager. The CM will average two trips to the site a week for the duration of the work, expected to be 78 weeks. FNI will provide also a part-time RPR. This individual will be on the Site approximately 20 hours per week and will act as FNI's agent at the site. He also will act as directed by and under the supervision of FNI and will confer with FNI regarding Resident Project Representative's actions. Resident Project Representative's dealings in matters pertaining to the on-site Work shall in general be with FNI 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 FNI..

**F2. Duties and Responsibilities**

The duties, responsibilities, and the limitations of authority of the RPR, and designated assistants, are as follows:

**F2.1. Schedule**

No change.

**F2.2. Conferences**

No change.

**F2.3. Liaison**

No change.

**F2.4. Shop Drawings and Samples**

No change.

**F2.5. Review of Work, Rejection of Defective Work, Inspections and Tests**

No change.

**F2.6. Interpretation of Contract Documents**

No change.

**F2.7. Request for Revisions**

No change.

**F2.8. Records**

No change.

**F2.9. Reports**

No change.

**F2.10. Payment Requests**

No changes.

**F2.11. Certificate, Maintenance and Operation Manuals**

No changes.

**F2.12. Completion**

No changes.

**F3. Limitation of Authority of Project Representative:**

No changes.

**TASK G: GEOTECHNICAL INVESTIGATION**

No change

**TASK H: SURVEY INVESTIGATION**

No change

**TASK I: EASEMENT LEGAL DESCRIPTION AND EXHIBIT PREPARATION**

Additional effort related to the preparation and acquisition of easements for HCFCD, Harris County, private owners and adjustment of alignment according to the attached proposal provided by Gorrondona and Associates. Total Not to Exceed Fee of \$34,500

**TASK J: SUBSURFACE UTILITY ENGINEERING**



No change

**TASK K: ENVIRONMENTAL EVALUATION**

No change

**TASK L: CONSTRUCTION MATERIAL TESTING provided by UES**

Consultant will coordinate with the material testing laboratory (UES) the testing of compacted soils and concrete based on the proposals attached to this amendment in a total cost not to exceed of \$109,250 .This includes \$57,500 for Phase 1 and \$51,750 for Phase 2.

**Summary of Meetings**

**Phase I (30-Inch)**

No change

**Phase II (24-Inch)**

No change

**Summary of Presentations**

- One (1) alternate route study workshop: Complete

**List of Deliverables**

**Phase I (30-Inch)**

No change

**Phase II (24-Inch)**

No change

**Summary of Project Schedule**

No change.

**Summary of Amendment Fee for Engineering Services**

FNI proposes to perform the additional Special Services outlined above for a **not to exceed fee of \$1,234,720**, for a **project increase of \$176,021**. The **total amended project cost is \$2,397,179** as shown in **Table 2**.

**Table 2: Summary of Amendment Fee for Basic and Special Services**

Basic Services			
Description	Current	Amend	Proposed
Tasks A - C: Project Management/Alternate Route Study/Final Design Phase	\$635,823	\$0	\$635,823
Task D: Bid Phase	\$50,931	\$0	\$50,931
Task E: Construction Phase General Rep.	\$472,705	\$0	\$472,705
<b>Basic Services Subtotal (Lump Sum)</b>	<b>\$1,159,459</b>	<b>\$0</b>	<b>\$1,159,459</b>
Special Services			
Description	CPM Fee		
Task F: Resident Project Representation	\$635,738	\$32,271	\$668,009
Task G: Geotechnical Investigation	\$ 97,356	\$0	\$ 97,356
Task H: Topographic Survey	\$ 136,588	\$0	\$ 136,588
Task I: Easement Legal Description and Exhibit Prep	\$ 67,752	\$ 34,500	\$ 102,252
Task J: Subsurface Utility Engineering	\$ 101,370	\$0	\$ 101,370
Task K: Environmental Evaluation	\$19,895	\$0	\$19,895
Task L: Construction Material Testing	\$0	\$109,250	\$109,250
<b>Special Services Subtotal (CPM)</b>	<b>\$1,058,699</b>	<b>\$176,021</b>	<b>\$1,234,720</b>
<b>Project Total (Basic + Special Services)</b>	<b>\$2,218,158</b>	<b>\$176,021</b>	<b>\$2,394,179</b>



Mr. Carlos Quintero  
Freese and Nichols, Inc.  
10497 Town and Country Way, Suite 600  
Houston, TX 77024

February 20, 2025

Re: UES Proposal No. 110872  
Construction Materials Testing  
FM 2920 Lift Station Consolidation Phase 1 - 30 in. Sanitary Sewer (Preliminary)  
Tomball, TX

Dear Mr. Quintero:

UES Professional Solutions 44, LLC (UES), is pleased to submit this proposal for providing Construction Materials Testing (CMT) and related quality control services for the referenced project.

UES has integrated the resources of Alpha Testing, Riner Engineering, Rock Engineering and Testing and In-Control Technologies to form the largest geotechnical engineering, materials testing, special inspection and environmental services firm in the Texas Gulf Coast region. Our personnel and equipment resources are unmatched and we have the experienced staff to perform the necessary CMT services in accordance with the project requirements. In the Houston area, UES is accredited by the American Association for Laboratory Accreditation (A2LA) and meets the requirements of ASTM E329. We also participate in Cement and Concrete Reference Laboratory (CCRL) and AASHTO re:source proficiency sampling programs.

For the purpose of this proposal, we have estimated quantities and tests per our experience, with the information provided. The actual costs for CMT services can decrease or increase with changes in the scope of work and are heavily dependent on the contractor's work methods, production, and sequencing. This is only an estimate for budgetary purposes and UES's total fee will be based on the actual amount of time and laboratory testing required for the project. These services will be performed on a unit price basis in accordance with the attached Schedule of Services and Fees. UES is willing to re-evaluate our budget once a formal construction schedule is finalized.

UES utilizes a proprietary electronic laboratory data management and report generation system. CMT reports prepared in Adobe PDF format are emailed to the Client and their designees. Report turnaround time is typically one day. UES also provides an extranet where CMT reports can be accessed by the Client at any time. CMT reports are automatically posted to our extranet when they are emailed. Our system is designed to provide high quality, real-time information.

By execution of this proposal, the undersigned Client acknowledges and agrees that the document entitled "Terms and Conditions" has been provided or made available to Client and Client agrees that such Terms and Conditions shall be applied to the present Proposal and shall be fully binding upon Client. The Terms and Conditions are fully incorporated into this Proposal by reference as if set forth at length.

## FIRM PROFILE

UES is a registered Texas engineering firm (#813) and a Texas geoscience firm (#50341), meets the requirements of ASTM E-329, is AASHTO R-18 accredited, and has engineers licensed in multiple states. UES currently employs over 275 people.

UES recognizes that our client base faces challenges at every turn, either meeting a deadline, meeting a budget, or overcoming a field or design challenge. It is our internal challenge to make your challenges ours. Tell us what you need, we will take ownership, ask the needed questions, then be responsive in execution.

### BUSINESS LOCATIONS

#### Austin

2324 Ridgepoint Drive, Suite E  
Austin, Texas 78754  
Phone: 281-469-3347

#### Corpus Christi

6817 Leopard Street  
Corpus Christi, TX, 78409  
Phone: 361-883-4555

#### Dallas

2209 Wisconsin Street  
Dallas, TX 75229  
Phone: 972-620-8911

#### Fort Worth

5058 Brush Creek Road  
Fort Worth, TX 76119  
Phone: 817-496-5600

#### Houston – East

4667 Kennedy Commerce Drive  
Houston, Texas 77032  
Phone: 281-469-3347

#### Houston – North

14731 Pebble Bend Dr  
Houston, Texas, 77068  
Phone: 281-580-8892

#### Houston – West

15811 Tuckerton Road  
Houston, TX 77095  
Phone: 713-360-0460

#### Rio Grande Valley

11818 West Business Hwy 83, Unit 1  
La Feria, TX 78559  
Phone: 956-201-4797

#### Round Rock

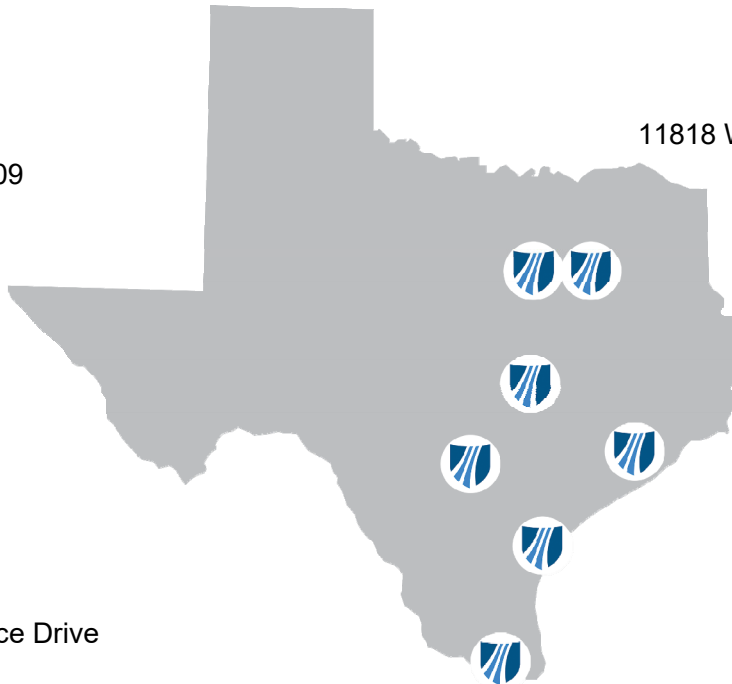
7 Roundville Lane  
Round Rock, TX, 78664  
Phone: 512-284-8022

#### San Antonio – East

4740 Perrin Creek, Suite 480  
San Antonio, TX 78217  
Phone: 210-249-2100

#### San Antonio – West

10856 Vandale Street  
San Antonio, TX, 78216  
Phone: 210-495-8000



### Quality Control

All testing equipment in UES's laboratories is calibrated on an annual basis using traceable standards (NIST or NISTL). Calibrations are confirmed by CCRL and AASHTO on a bi-annual basis during third-party inspections. Along with calibration of equipment, UES also maintains an internal QA/QC program to assure consistent and reliable test results. This program pertains to methodologies for performing tests that have been developed and expanded through years of experience.

We appreciate the opportunity to submit this proposal for CMT services and look forward to working with you during the construction phase of this project. If there are any questions concerning this proposal or if we can be of further assistance, please contact us at your convenience.

Respectfully submitted,

**UES**



Leah Martinez  
Project Estimating Manager

**CLIENT APPROVAL**

**ESTIMATED BUDGET: \$45,000.00**

Consultant offers the CLIENT the Proposal as described above. CLIENT may accept Consultant's offer by signing in the space provided below and returning a signed copy to Consultant. Such notification may be given by fax or by returning the original proposal. In the event the CLIENT authorizes work without returning a signed copy, the CLIENT agrees to be bound by the terms and conditions as stated herein. The proposal described above has been read, understood, and accepted by CLIENT effective as of the date that the executed proposal is returned to Consultant.

**EXECUTED BY CLIENT'S AUTHORIZED REPRESENTATIVE:** \_\_\_\_\_  
(signature)

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date Accepted: \_\_\_\_\_

CLIENT Business Name: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**ACCOUNTS PAYABLE INFORMATION**

A/P Contact Name: \_\_\_\_\_ A/P Contact Telephone: \_\_\_\_\_

\*A/P Contact Email: \_\_\_\_\_

*\*A/P Contact Email must be provided before UES can proceed with its proposed services*

**REPORT DISTRUBUTION**

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

UES

Construction Materials Engineering and Testing  
Basic Services and Cost Estimate

Project Name: FM 2920 Lift Station Consolidation Phase 1 - 30 in. Sanitary Sewer (Preliminary); Tomball, TX

DESCRIPTION	Estimated Quantity	Unit Rate	Estimated Total
<b>CMT Testing</b>			
Not to exceed budget based on attached fee schedule	1	\$45,000.00	\$45,000.00
<b>ESTIMATED BUDGET</b>			<b>\$45,000.00</b>

**UES**  
Construction Materials Engineering and Testing  
Standard Unit Rates

Project Name: FM 2920 Lift Station Consolidation Phase 1 - 30 in. Sanitary Sewer (Preliminary); Tomball, TX

<b>DESCRIPTION</b>	<b>UNIT RATE</b>
<b>EARTHWORK</b>	
Engineering Technician services performing in-place field density testing (per hour)	\$58.00
Engineering Technician services for sample pick-up (per hour)	\$58.00
Overtime (in excess of 8 hours per day) (per hour)	\$87.00
Vehicle Trip Charge (per trip)	\$100.00
Nuclear Density Equipment Charge (per trip)	\$100.00
Moisture/Density Relationship of Soils	
Standard Proctor (ASTM D 698) (each)	\$250.00
Modified Proctor (ASTM D 1557) (each)	\$250.00
Target Moisture Proctors (per point) (each)	\$120.00
With Lime added in laboratory, add (each)	\$75.00
Atterberg-limit Determinations	
Natural (each)	\$85.00
With Lime, add (each)	\$85.00
No. 200 Sieve Analysis (each)	\$85.00
Free Swell Tests (each)	\$100.00
Lime Series, pH Method (Eades & Grim Method) (each)	\$375.00
Soluble Sulfate (Standard 8 Day turn around, Rush rates quoted upon request) (each)	\$125.00
Compressive Strength of Stabilized Sand (each)	\$60.00
Completion Letter (min)	\$500.00
Moisture Content Tests (each)	\$9.50
Engineering Review (per hour)	\$150.00
<b>CONCRETE</b>	
Engineering Technician services for molding concrete test specimens, performing slump, rebar & air tests and testing at batch plant (per hour)	\$58.00
Engineering Technician Services Overtime (in excess of 8 hours per day) (per hour)	\$87.00
Specimen pick-up (4 hour minimum) (per hour)	\$58.00
Vehicle Trip Charge (per trip)	\$100.00
Laboratory compression testing and reporting of concrete cylinders (each)	\$22.00
Reserve concrete cylinders not tested (each)	\$22.00
Engineering Review (per hour)	\$150.00

**UES Professional Solutions 44, LLC**  
**GENERAL CONDITIONS – TEXAS**

**SECTION 1: SCOPE OF SERVICES**

1.1 UES Professional Solutions 44, LLC (“UES”) will provide to Client the professional services described under the Scope of Services (“Services”) in the Professional Services Agreement (“Agreement”) between UES and Client to which these General Conditions form a part.

1.2 UES shall provide revised or additional services, including changes to the Services necessary due to changed or unforeseen conditions, only in accordance with a written Addendum or Change Order (collectively, “Addendum”) to the Agreement agreed to by UES and Client, and only to the extent set forth in that Addendum. Either UES or Client may communicate in writing any requested changes in the nature and scope of the Project; in either case, the changes shall only be executed upon written approval of the Addendum by UES and Client.

1.3 Unless otherwise provided for in the Agreement, the Services will be provided on a standard work schedule of Monday through Friday 8:00 AM to 5:00 PM (excluding holidays), and samples will be analyzed on a standard five (5) to seven (7) business day laboratory turnaround time.

1.4 UES shall not be responsible for any delays, fees or costs associated with adverse or unusual weather conditions that prevent the Services from being safely conducted.

1.5 UES shall provide the personnel, equipment, Level D personal protective equipment (as defined by the Occupational Safety and Health Administration (“OSHA”), and other materials necessary to provide the Services. UES, at its sole discretion, may retain subcontractors or other third-parties to assist it in the provision of the Services.

1.6 Client will provide UES with written authorization to proceed with the Services and any associated fee (e.g., retainer) prior to UES initiating work on the Services.

1.7 The terms “Project” and “Site” are used interchangeably in these General Conditions refer to the land and/or construction project on which or to which UES is to provide Services under this Agreement.

1.8 UES shall perform all Services hereunder as an independent contractor, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant, or employer and employee between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party. UES also agrees not to be treated, or seek to be treated, as an employee of Client for any purpose, including for the purposes of fringe benefits provided by Client, or for disability income, social security taxes and benefits, Federal unemployment compensation taxes, State unemployment insurance benefits and Federal income tax withholding at sources. UES hereby represents that UES has and at all times will maintain timely payments of all taxes due to the Internal Revenue Service and all other government agencies, including withholding and all other taxes.

**SECTION 2: PROFESSIONAL STANDARD OF CARE**

2.1 UES will provide its services under this Agreement in a manner consistent with the level of professional care and skill ordinarily exercised by similar professionals practicing contemporaneously under similar conditions in the locality of the Project. NO OTHER WARRANTY CONCERNING THE SERVICES UES PROVIDES UNDER THE AGREEMENT OR ANY ADDENDUM, EXPRESS OR IMPLIED, IS MADE, AND ALL OTHER WARRANTIES, INCLUDING THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW.

2.2 Client understands that subsurface investigations may involve drilling, boring, excavating or sampling through varied subsurface soil and water strata which, consistent with the prevailing standard of professional care, may result in the unavoidable or inadvertent cross-mingling of soil and water and any Hazardous Substances or constituents contained in them, and that this risk cannot be eliminated despite the exercise of professional care. IF SUCH SUBSURFACE INVESTIGATIONS ARE PART OF THE SERVICES, CLIENT WAIVES ANY CLAIM AGAINST UES, AND SHALL INDEMNIFY, DEFEND, AND HOLD UES HARMLESS FROM ANY CLAIM OR LIABILITY FOR INJURY OR LOSS ARISING FROM CROSS-CONTAMINATION RELATED TO SUCH SUBSURFACE EXPLORATIONS INCLUDING, WITHOUT LIMITATION, ANY CLAIM OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

2.3 UES will take reasonable precautions to minimize damage to the Site, but it is understood by Client that, in the normal course of the provision of the Services, including sampling or drilling, some damage to or alteration of the Site is possible. The repair of such damage shall not be part of the Services unless explicitly specified in writing in the Agreement.

2.4 The Services provided by UES are not intended to be and shall not be construed as providing legal advice, and UES shall not be responsible for Client’s compliance with any applicable laws.

2.5 Client and Client’s personnel and contractors shall promptly inform UES of any actual or suspected defects in UES’s services, to help UES take those prompt and effective measures that in UES’s opinion will help minimize the consequences of any such defect. Client’s payment in full of the amount owed for services rendered shall be taken to mean that Client is satisfied with and has accepted UES’s services.

**SECTION 3: SITE ACCESS, SITE CONDITIONS AND CLIENT RESPONSIBILITIES**

3.1 Client will grant or obtain at its expense lawful and safe access to the Site as needed for UES to perform the Services and will notify all affected persons and entities in writing of UES’s presence. The access shall be adequate to allow UES to conduct the Services, including bringing and storing equipment and tools on the Site and any necessary access to exterior and interior areas. UES shall not be responsible for any delays, fees or costs caused by delayed or restricted access that prevents or slows the delivery of the Services by UES.

3.2 If the Site is not owned or operated by Client or the Client does not otherwise have the authority to grant UES lawful access, Client shall be responsible for obtaining, at its own expense, an access agreement for the Site and shall provide UES a copy of such access agreement at least three business days in advance of the date contemplated for the first Site access related to the Project. UES reserves the right to delay, without penalty, any Site visit and the provision of Services under the Agreement if a site access agreement, in UES’ reasonable judgment and discretion, would impose conditions, liabilities or risks on UES in excess of those set forth in these General Conditions or the Agreement. IF THE SITE IS NOT OWNED BY CLIENT, CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES AND SUCCESSORS (“UES INDEMNITEES”) HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES (INCLUDING ATTORNEY’S FEES) ALLEGED BY THE SITE OWNER OR THE SITE OWNER’S EMPLOYEES, AGENTS, CONTRACTORS OR OTHER PERSONS OR ENTITIES ARISING FROM UES’S PERFORMANCE OF SERVICES UNDER THE AGREEMENT AT SUCH SITE INCLUDING, WITHOUT LIMITATION, ANY CLAIM, LOSS, DAMAGE OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

3.3 Unless otherwise expressly provided for in the Agreement, Client will be responsible for communicating and coordinating with the Site owner(s) with respect to access necessary to the provision of the Services, including security procedures, opening gates, providing access to buildings, avoiding conflicts between provision of the Services and any commercial or manufacturing activities on the Site, and moving vehicles or other equipment that may interfere with the agreed upon Site activities and the Site access necessary to conduct such activities, including opening gates to allow equipment to gain access to proposed work areas, areas to store necessary equipment, as well as access to the interiors of any onsite buildings.



3.4 Client shall be responsible for the safety of the Site where the Project is conducted and for providing a safe environment for UES to provide the Services. UES shall be responsible for the safe and compliant conduct of its personnel at the Site and shall also comply with the reasonable and lawful work rules for the Site. As required by applicable laws, UES will prepare a site-specific Health and Safety Plan (HASP) applicable to its personnel for the Services provided at the Site. UES shall not be responsible for the safety of other personnel at the Site, nor shall it be responsible for ensuring that the Site complies with environmental, health and safety laws, or reporting any unsafe conduct or non-compliance that it may observe. If UES encounters conditions at the Site that are unsafe for its personnel, it reserves the right at its sole discretion to suspend or halt work until such conditions are cured. UES shall not be responsible for any fees, costs or damages associated with any safety-related delays. Unless otherwise provided for in the Agreement, UES shall not work in conditions that require personal protective equipment beyond that classified as Level D by OSHA.

3.5 Client shall inform UES of any reporting or other requirements imposed by any third parties, such as federal, state, or local entities with respect to environmental matters relevant to the Services, Client shall assume responsibility to provide any required notice to any third party, and it shall secure the necessary permits or permissions from any third parties (including governmental authorities) required for UES's provision of the Services. If included in the Agreement, Client may authorize UES to obtain certain permits on Client's behalf, in which case Client shall be responsible for any fees or expenses incurred by UES with respect to obtaining such permits.

3.6 Client shall provide UES with all necessary information to perform its services, including, but not limited to, maps, site plans, reports, surveys, plans and specifications, environmental and hydrogeological investigations and studies, other designs, documents, and any other existing environmental information about the Site. Client assumes all liability for information not provided to UES that could affect the quality or sufficiency of the Services UES provides. If UES encounters undisclosed or unforeseen conditions that may cause material delays or an increase in fees or costs, UES shall inform Client and any changes in schedule, fees or costs shall be addressed in an Addendum. UES shall not be responsible for any delays, fees or costs caused by undisclosed or unforeseen conditions.

3.7 Client is responsible for accurately identifying to UES in writing the existence and location of all subterranean structures and utilities on or affecting the Site (including the type and location of utility lines) and the services to be provided by UES. UES will take reasonable precautions to avoid affecting subterranean structures and utilities disclosed to it in writing by Client. If included in the Agreement, Client may authorize UES to conduct applicable public utility identification and clearance requirements on behalf of Client. CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES INDEMNITEES HARMLESS FOR ANY CLAIMS, LOSSES, DAMAGES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES ARISING FROM DAMAGE DONE TO ANY SUBTERRANEAN STRUCTURES OR UTILITIES, OR FOR THE RELEASE OF ANY HAZARDOUS SUBSTANCES FROM ANY SUCH STRUCTURES OR UTILITIES, THAT ARE NOT ACCURATELY IDENTIFIED AND LOCATED IN WRITING AND DISCLOSED TO UES BY CLIENT BEFORE UES COMMENCES ITS WORK INCLUDING, WITHOUT LIMITATION, ANY CLAIM, LOSS, DAMAGE OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

3.8 Unless otherwise stated in the Agreement, any soil or groundwater monitoring activities that are included in the Services are based on the assumption that soil borings and monitoring wells can be installed using standard truck-mounted drilling equipment, the locations are accessible to such equipment, and that surface conditions at each location consists of non-reinforced asphalt or concrete not exceeding six (6) inches in thickness and no concrete or asphalt cutting will be required. If UES encounters materially different conditions at the Site, UES shall inform Client and an Addendum shall be agreed to that addresses any changes in schedule, fees or costs associated with the changed conditions.

#### SECTION 4: HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CONDITIONS

4.1 Client represents it has informed UES of all known or suspected Hazardous Substances on, under or near the Site of which it is aware, and that it has provided UES with all studies, reports, investigations, or similar documents in its possession about the environmental conditions at the Site, including any documents and correspondence involving Federal, State or local environmental, health or safety regulatory notifications.

4.2 For purposes of the Agreement and these General Conditions, the term "Hazardous Substances" includes materials defined or regulated as hazardous substances, hazardous materials, hazardous wastes, hazardous constituents, solid wastes, pollutants, or toxic substances under any Federal, State or local environmental, health, safety or natural resources law, statute, regulation or ordinance, including but not limited to petroleum products, polychlorinated biphenyls, per- and polyfluoroalkyl substances, asbestos, and any other material or substance listed or identified by the United States Environmental Protection Agency or any similar State or local agency as presenting a potential danger to health, safety or the environment.

4.3 Except to the extent required by law, UES shall not be responsible for making any disclosures to governmental agencies or the Site owner regarding the presence or release of Hazardous Substances on, under, from or around a Site.

4.4 [FOR INVESTIGATION / REMEDIATION PROJECTS] The discovery of Hazardous Substances or other environmental conditions on, under or near the Site not contemplated within the Services may constitute a changed condition, necessitating an Addendum or Change Order. In the event of the discovery of Hazardous Substances or other environmental conditions not contemplated within the Services, Client agrees to compensate UES for all expenses incurred or caused by the discovery, including but not limited to those related to worker protection and exposure, emergency response actions and equipment decontamination.

[FOR GEOTECH PROJECTS ONLY] Client agrees that the discovery of Hazardous Substances or other environmental conditions on, under or near the Site not contemplated within the Services may constitute a changed condition, necessitating an Addendum or Change Order. Although unlikely, Client acknowledges that such a discovery may make it necessary for UES to take immediate measures to protect the health and safety of its employees and other persons, or to arrange for others to do so, including and up to delaying or terminating work. Client agrees to compensate UES for all expenses incurred or caused by the discovery of unanticipated Hazardous Substances or environmental conditions encountered at the Site, including but not limited to those related to worker protection and exposure, emergency response actions and equipment decontamination.

4.5 [FOR INVESTIGATION / REMEDIATION PROJECTS] All substances on, in, or under Client's site, or obtained from Client's site as samples or as byproducts of the sampling process, shall be Client's property. UES shall not be required to sign or certify a waste manifest, disposal ticket, or similar document relating to the transportation or disposal of wastes or Hazardous Substances. UES may serve as Agent for Client if requested under a separate agreement and authorization. Client shall be considered the "generator" of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* and agrees that it shall assume all duties as "generator" of any waste material associated with the Services. Further, Client agrees that UES is not a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances and shall not be so identified on any document.

[FOR GEOTECH PROJECTS] All substances on, in, or under Client's site, or obtained from Client's site as samples or as byproducts of the sampling process, shall be Client's property. Unless otherwise expressly specified in the Agreement or the Services, the characterization, management and disposition of substances, including Hazardous Substances, generated during the Services (including, but not limited to, wastes, samples, produced soils or fluids, cuttings, or protective gear or equipment, etc.) is the sole responsibility of Client. Client shall be considered the "generator" of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* and agrees that it shall assume all duties as "generator" of any waste material associated with the Services. Further, Client agrees that UES is not and shall not be identified as a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances on any document. Unless specifically provided for in the Agreement, UES shall not have any res

with respect to the storage or preservation of samples, and Client agrees that UES is not responsible or liable to Client for any loss of samples that are shipped to a testing facility or retained in storage.

4.6 UES shall not have custody of any monitoring wells or permanent sampling locations installed as part of the Project, and shall not be responsible for proper maintenance, repair, or closure of such wells, unless otherwise provided for in the Agreement.

4.7 CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES (INCLUDING ATTORNEY'S FEES AND CONSULTANTS' FEES, COSTS OF DELAY OF THE SERVICES, AND ANY COSTS ASSOCIATED WITH POSSIBLE REDUCTION TO THE VALUE OF THE PROJECT OR THE SITE IN WHICH IT IS SITUATED) ARISING FROM (I) UES' DISCOVERY OF OR ITS EMPLOYEES' OR SUBCONTRACTORS' EXPOSURE TO HAZARDOUS SUBSTANCES OR SUSPECTED SUBSTANCES RELATED TO THE SERVICES, TO THE EXTENT CAUSED BY CLIENT'S NEGLIGENCE OR WILLFUL MISCONDUCT; (II) ANY DISCLOSURES UES IS REQUIRED TO MAKE BY LAW REGARDING HAZARDOUS SUBSTANCES OR ENVIRONMENTAL CONDITIONS AT A SITE; (III) ANY CLAIMS MADE ALLEGING THAT (A) UES IS AN OWNER OR OPERATOR OF THE SITE AT WHICH THE SERVICES ARE RENDERED; (B) UES IS THE GENERATOR, STORER OR TREATER OF HAZARDOUS SUBSTANCES AT SUCH SITE; OR (C) THAT UES ARRANGED FOR THE TRANSPORTATION OR DISPOSAL OF ANY HAZARDOUS SUBSTANCES FROM THE SITE; (IV) ANY VIOLATION BY CLIENT OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, ORDER, DECREE OR ORDINANCE RELATED TO HAZARDOUS SUBSTANCES; OR (V) ANY CLAIMS MADE BY THIRD-PARTIES WITH RESPECT TO ALLEGED EXPOSURES TO OR DAMAGES CAUSED BY HAZARDOUS SUBSTANCES AT OR FROM THE SITE OR DURING OR RELATED TO ANY PROJECT OR THE PROVISION OF SERVICES, TO THE EXTENT CAUSED BY CLIENT'S NEGLIGENCE OR WILLFUL MISCONDUCT.

#### **SECTION 5: BILLING AND PAYMENT**

5.1 UES will submit invoices to Client in accordance with the Agreement for the specific Project. If the Agreement includes a retainer, the retainer must be received by UES before it will initiate work on the Project.

5.2 Payment will be due 30 days after presentation of invoice. Client will pay a finance charge of one and one-half percent (1 1/2 %) per month, or the maximum rate allowed by law, on all past due invoices. If UES incurs any expenses to collect overdue invoices, Client will also be liable for all sums incurred for reasonable attorneys' fees, expert witness fees, time of UES's employees, expenses and court costs, and interest.

5.3 Client agrees that UES may refuse to release to Client any reports, findings, data and other work product until it has been paid in full for services rendered. UES reserves, and does not waive, any lien rights it may have for unpaid professional services. Client agrees that all reports and other work furnished to Client or its agents that Client has not timely paid for will be returned upon demand and will not be used by the Client for any purpose.

5.4 UES shall have no obligation under this Agreement or any Addendum to provide expert consultant or expert witness services in litigation, arbitration, or any other dispute resolution proceeding, to produce its work product in discovery, to undertake any further investigation or analysis or prepare a report in connection with any such proceeding, or to make available for testimony its current or former employees or consultants. The Parties will execute a new agreement for any such services. In the absence of a new executed agreement for such services, Client will pay UES 150% of its prevailing rates and expenses for the time spent by UES employees and costs incurred on any such additional tasks.

5.5 Services provided at the Client's request outside normal business hours will be performed for an additional fee to be negotiated and reflected in the Agreement or an executed Addendum, or, if no such fee is negotiated, at 150% of UES standard rates.

5.6 Reimbursable expenses, those outside of the scope of the proposed services, are charged to the Client at cost plus fifteen (15) percent and include the following items:

(i) Out of scope reproduction of plans, specifications and other documents, including plans and documents necessary for submission to regulatory agencies, but excluding documents reproduced for use by UES and any of its consultants.

(ii) Out of scope permit application and filing fees advanced by UES. Such fees will be invoiced to Client at cost.

(iii) The cost of equipment rental including, where applicable, equipment operators and subcontracted services, such as authorized photogrammetry, testing services, laboratory services, archeological services, and other specialized services, excluding those services which are explicitly included in the UES proposal. If the services covered by this Agreement are subject to local or state taxes or fees, such additional costs will be charged to the project and are subject to reimbursement as provided herein.

5.7 Fees and schedule commitments are subject to renegotiations for unreasonable delay caused by Client's failure to provide specified facilities or information, or for delays caused by unpredictable occurrences, or force majeure events such as fires, floods, strikes, riots, unavailability of labor or materials or services, acts of God or of public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above may result in additional costs (reflecting a change in scope) beyond that outlined in the proposed Agreement. UES shall have the right to increase its compensation payable by the Client to UES in the event that UES must modify services, facilities or equipment to comply with laws or regulations that become effective after execution of this Agreement, provided UES gives the Client fifteen (15) days prior notice as to the cause for escalation and the additional amounts involved.

5.8 The fees and charges reflected in UES's proposal for services are exclusive of any sales, use, personal property, value added and goods/services taxes. Where applicable, such taxes shall appear as a separate item on UES's invoice and Client shall be liable for the payment of such taxes to UES. Notwithstanding the foregoing, Client shall not be responsible for any foreign, federal, state or local taxes based on UES's net income or receipts, or such other taxes based on UES doing business in any particular jurisdiction.

#### **SECTION 6: INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

6.1 All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES during the provision of the Services, are instruments of service, and shall remain the property of UES. Neither Client nor any other entity shall change or modify UES's instruments of service. UES shall retain sole and exclusive ownership of all ideas, concepts, theories, improvements, designs, original works of authorship, formulas, processes, models, software, algorithms, inventions, know-how, techniques, compositions of matter and any other information owned by UES prior to the date of this Agreement or created or modified by UES during the provision of the Services.

6.2 UES will retain final reports generated as part of the Services for a period of at least five years following submission of such reports or completion of the Services, whichever is later. UES will make those records available to the Client in a reasonable time and manner, subject to payment of a reasonable fee for the time of UES employees to assemble and transmit those documents.

6.3 The Services and all deliverables provided as part of the Services (including but not limited to reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES), are prepared for the sole and exclusive use of Client, and Client is the only entity to which UES owes any duty, in contract or tort, pursuant to any law or under this Agreement. Any information or deliverables generated by UES during the provision of the Services may not be given or disclosed to any other entity, or used or relied upon by any other entity, without the express written consent of UES. Such written consent may take the form of a "reliance letter" which must be agreed to by such other person or entity to whom the Services and Deliverables may be disclosed, and for which a separate fee will be charged. UES shall be entitled to injunctive relief preventing/prohibiting any disclosure, reliance or attribution prohibited hereunder, and Client shall release, indemnify, defend, and hold harmless UES from any losses (including attorney's fees) arising from or related to such unauthorized disclosure, attribution or reliance.

6.4 Each party may disclose to the other party certain information that it considers to be confidential ("Confidential Information") provided such information is disclosed in writing and clearly marked or, if orally disclosed, promptly thereafter reduced to writing and clearly marked "Confidential." In no event shall Confidential Information include information that: (a) is or becomes publicly available other than through a breach of the Agreement; (b) is known to the party receiving such information prior to disclosure or is independently developed by such party subsequent to such disclosure without reference to Confidential Information provided hereunder; or (c) is subsequently lawfully obtained by the party receiving such information from a third party without obligations of confidentiality. Each party agrees that it (a) will not disclose or divulge the other party's Confidential Information to any person, (b) will not use the other party's Confidential Information for its own benefit or the benefit of others, (c) will employ at least the same degree of care in protecting Confidential Information as it employs in protecting its own confidential information, and (d) will, upon termination of the Agreement, or at any time at the request of the other party, return to the other party or destroy all copies of the other party's Confidential Information. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information to its employees, subcontractors and authorized agents who have a need to know such confidential information to fulfill its obligations under this Agreement. In the event a party receives a subpoena or other validly issued administrative or judicial process requesting the disclosure of the other party's Confidential Information, such party will promptly notify the other party and tender to it the defense of such demand and will cooperate (at the other party's expense) with the defense of such demand. Unless the demand shall have been timely quashed or extended, the party receiving the demand shall thereafter be entitled to comply with such demand when and to the extent required by law.

#### **SECTION 7: RISK ALLOCATION**

7.1 CLIENT AGREES WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT AND ANY ADDENDUM THAT THE AGGREGATE LIABILITY OF UES FOR ANY AND ALL CLAIMS, LOSSES, COSTS, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES, SHALL NOT EXCEED THE GREATER OF \$50,000.00 OR THE FEE ACTUALLY PAID BY CLIENT TO UES FOR THE SERVICES. IN CONSIDERATION FOR PAYMENT BY THE CLIENT OF AN ADDITIONAL SUM OF \$1,000, UES AGREES THAT ITS AGGREGATE LIABILITY WITH RESPECT TO ANY AND ALL CLAIMS, LOSSES, COSTS, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES, ARISING FROM SERVICES PROVIDED UNDER THIS AGREEMENT AND ANY ADDENDUM THERETO SHALL BE THE GREATER OF \$50,000 OR UP TO \$1,000,000 IN COVERAGE BY ITS PROFESSIONAL LIABILITY POLICY (INCLUDING ANY DEDUCTIBLE OR SELF INSURED RETENTION). The terms "claim" or "claims" mean any claim in contract, tort, or statute alleging errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligence, negligent misrepresentation, and any other basis giving rise to liability in law or equity.

7.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY PROVIDED FOR IN THE AGREEMENT OR ANY ADDENDUM, UES SHALL NOT BE LIABLE TO CLIENT FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO REDUCTION IN VALUE OF REAL PROPERTY, PENALTIES ASSOCIATED WITH NON-COMPLIANCE WITH LAW, LOST PROFITS, LOSS OF USE, FINANCING COSTS AND LOST SAVINGS) INCURRED BY CLIENT. ITS EMPLOYEES, CONSULTANTS, AGENTS, CONTRACTORS OR SUBCONTRACTORS.

7.3 Client agrees that it will not seek damages in excess of this contractually agreed-upon limitation against any other person or entity who may in turn join UES as a third-party defendant for such damages, or where such person or entity may seek recovery from UES in a separate proceeding. CLIENT SHALL INDEMNIFY, DEFEND AND HOLD UES INDEMNITEES HARMLESS FOR ANY SUCH DAMAGES (INCLUDING ATTORNEY'S FEES) AWARDED TO ANY OTHER PERSON OR ENTITY AS A RESULT OF ANY LITIGATION, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING COMMENCED BY CLIENT AGAINST ANY SUCH PERSON OR ENTITY FOR DAMAGES FOR WHICH UES MAY BE IN WHOLE OR PART BE HELD LIABLE INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

#### **SECTION 8: INSURANCE**

8.1 UES represents it has Worker's Compensation insurance in force, that is has commercial general liability coverage in the amount of \$1,000,000.00 and has professional liability insurance in the amount of \$1,000,000.00.

8.2 Client shall maintain such insurance as is necessary to fully underwrite Client's defense and indemnity obligations set forth herein, and shall, upon request by UES, provide proof to UES to verify such insurance.

#### **SECTION 9: INDEMNITY**

9.1 IN ADDITION TO AND NOTWITHSTANDING ANY OTHER PROVISION IN THESE GENERAL CONDITIONS, CLIENT AGREES, TO THE FULLEST EXTENT PROVIDED BY LAW, TO RELEASE, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO UES), INDEMNIFY, AND HOLD UES, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES AND SUCCESSORS ("UES INDEMNITEES") HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES FROM OR BY ANY PERSON OR ENTITY ARISING FROM (1) ACTS OR OMISSIONS BY CLIENT, CLIENT'S AGENTS, STAFF, AND OTHERS EMPLOYED BY OR CONTRACTED TO CLIENT, INCLUDING ARCHITECTS, ENGINEERS, CONTRACTORS, SUBCONTRACTORS, AND CONSULTANTS, WHETHER OR NOT UES IS RESPONSIBLE IN WHOLE OR IN PART FOR THE ACTS OR OMISSIONS FOR WHICH CLIENT IS INDEMNIFYING UES AND (2) THE PROVISION OF THE SERVICES BY UES EXCEPT TO THE EXTENT CAUSED BY UES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SUCH EXCEPTION SUBJECT TO THE LIMITS SET FORTH IN SECTION 7. FOR THE AVOIDANCE OF DOUBT, CLIENT'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 9.1 INCLUDE, WITHOUT LIMITATION, INDEMNIFICATION FOR ANY CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

9.2 UES AGREES TO INDEMNIFY, AND HOLD CLIENT HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING TO THE EXTENT SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY UES IN THE PROVISION OF THE SERVICES, SUBJECT TO THE LIMITS SET FORTH IN SECTION 7.

9.3 To the extent either party's damages are covered by available insurance, Client and UES waive all rights of subrogation against each other and against the contractors, subcontractors, consultants, agents, and employees of the other, except such rights as they may have to the proceeds of such insurance.

#### **SECTION 10: DISPUTE RESOLUTION**

10.1 All claims, disputes, and other matters in controversy between UES and Client arising out of or in any way related to this Agreement or any Addendum shall be decided by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, UES shall not be required to arbitrate any legal and/or equitable claims (including statutory and equitable liens) for collection of monies due. The successful party in any such action will be entitled to recover its reasonable attorneys' fees, expert witness fees, and other claim-related expenses and court costs incurred, and also the time value at prevailing rates of its employees reasonably incurred in prosecuting or defending the claims, with any claims against UES subject to the limitations in Section 7.

10.2 Notwithstanding the foregoing, all claims, including for negligence or any other cause whatsoever that the Client has or claims to have against UES, shall be deemed waived unless (i) Client notifies UES of the claim or claims within thirty (30) days of discovery thereof, and (ii) i

contends that a claim exists against UES for negligence or another violation of a standard of care owed by UES, Client has first provided UES with a written certification executed by an independent design professional currently practicing in the same discipline as UES. The certification shall: a) identify the name of the professional; b) specify each and every act or omission that the certifier contends is a violation of the standard of care identified in the Proposal Agreement; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to UES not less than thirty (30) calendar days prior to the institution of any arbitration or judicial proceeding.

10.3 NOTWITHSTANDING THE FOREGOING, UES SHALL HAVE NO LIABILITY FOR ANY CLAIM DISCOVERED BY CLIENT MORE THAN ONE YEAR AFTER DELIVERY OF THE LAST ISSUED REPORT BY UES FOR THE SERVICES DESCRIBED IN THE PROPOSAL AGREEMENT.

#### **SECTION 11: TERMINATION**

11.1 This Agreement may be terminated by either party for cause upon seven (7) days written notice and opportunity to cure in the event of a material breach by the other party, or in the case of a force majeure event such as terrorism, act of war, riot, insurrection, strike, declared public health emergency, flood, unusual weather condition, or act of God that continues or affects the Site for more than seven (7) calendar days. Such termination shall not be effective if such material breach or force majeure event has been remedied before expiration of the period specified in the written notice. In the event of any termination, UES shall be paid for Services (including any related costs and expenses) performed up to the termination notice date plus reasonable termination expenses.

11.2 UES and Client may terminate this Agreement at any time by mutual written consent.

11.3 In the event of termination or a suspension for more than three months of the Project for which these Services are to be provided, UES may in its sole discretion complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs incurred by UES in completing such analyses, records, and reports.

#### **SECTION 12: REVIEWS, INSPECTIONS, TESTING, AND OBSERVATIONS**

12.1 If the Services include oversight, monitoring or observation of work being conducted by third parties (other than UES subcontractors), such services shall be conducted solely to determine that the work being overseen, monitored, or observed is in general conformity to the contractual requirements between Client and such third parties. Client shall have sole responsibility and authority to reject, suspend or stop the work of such third parties, or modify or terminate any agreement between Client and such third parties.

12.2 UES shall not have the responsibility or authority to stop, suspend, or modify the work of such third parties, and does not guarantee that work it inspects conforms in all respects to the design, or to applicable laws, statutes, regulations, rules or codes, and it shall have no liability for design or construction defects, or the failure of Client's designers or contractors to comply with their contractual obligations.

12.3 Neither the activities of UES pursuant to this Agreement, nor the presence of UES or its employees, representatives, or subcontractors on the Project Site, shall be construed to impose upon UES any responsibility for means or methods of work performance, superintendence, sequencing of construction, or safety or environmental conditions or compliance at the Project Site. Client acknowledges that Client or its contractor is solely responsible for Project jobsite safety and compliance with environmental, health and safety laws.

12.4 Client is responsible for scheduling all inspections and construction materials testing ("CMT") activities of UES. UES will not be responsible for tests and inspections that it does not perform due to Client's failure to timely schedule work.

12.5 Client shall at the time of execution of the Agreement provide UES with a proposed schedule for tests and inspections UES shall perform. Client will give reasonable notice of all changes to that schedule. UES shall not be required to conduct any tests or inspections on less than 72 hours written notice, nor after normal business hours or on weekends or holidays.

#### **SECTION 13: SOLICITATION OF EMPLOYEES**

Client agrees that during the term of the Agreement, and for a period of one (1) year after the last date on which UES has provided services hereunder, Client shall not, directly or indirectly, solicit or attempt to solicit for employment, or contract directly or indirectly with, any employee of UES except as authorized in writing by UES. Client agrees that its breach of this Section shall cause UES irreparable harm, and that UES may, in addition to recovering any provable damages, enforce this obligation by injunction.

#### **SECTION 14: NO ASSIGNMENT**

Neither Client nor UES may delegate, assign or transfer its rights or obligations under the Agreement for any reason without the written consent of the other party. For avoidance of doubt, this provision does not affect UES' right, at its sole discretion, to use contractors or subcontractors in the performance and delivery of the Services.

#### **SECTION 15: GOVERNING LAW**

15.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the conflict of laws provisions of the State of Texas to the extent such principles or rules would require or permit the application of the laws of any other jurisdiction.

15.2 If any of the provisions of this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired and will survive. Limitations of liability and indemnities provided for will survive termination of this Agreement for the period of all applicable statutes of limitations to which they relate.

15.3 **WITH RESPECT TO CLIENT'S INDEMNIFICATION OBLIGATIONS HEREUNDER, THESE TERMS AND CONDITIONS COMPLY WITH THE REQUIREMENT, KNOWN AS THE EXPRESS NEGLIGENCE RULE, TO EXPRESSLY STATE IN A CONSPICUOUS MANNER TO AFFORD FAIR AND ADEQUATE NOTICE THAT THESE TERMS AND CONDITIONS CONTAIN PROVISIONS REQUIRING ONE PARTY TO BE RESPONSIBLE FOR THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANOTHER PARTY.**

#### **SECTION 16: INTEGRATED AGREEMENT**

16.1 This Agreement, and any Addendum represent and contain the entire and only agreement and understanding among the parties with respect to the subject matter of their subject matter, and they supersede all prior or contemporaneous oral and written agreements, understandings, representations, inducements, promises, communications, and conditions between the parties. No agreement, understanding, representation, inducement, promise, or condition with respect to the subject matter of this Agreement shall be relied upon by the parties unless expressly incorporated herein.

16.2 In the event any provision of the Agreement or these General Conditions shall be invalid, illegal or unenforceable in any respect, such a provision shall be considered separate and severable from the remaining provisions of this Agreement, and the validity, legality or enforceability of any of the remaining provisions of this Agreement shall not be affected or impaired by such provision in any way.

#### **SECTION 17: NO AMENDMENT**

17.1 The Agreement, including these General Conditions, may not be amended, or modified except by a writing signed by both parties.

17.2 Failure by either party at any time to enforce any obligation by the other party, to claim a breach of any term of the Agreement or to exercise any power agreed to hereunder will not be construed as a waiver of any right, power or obligation under the Agreement, will not affect any subsequent breach, and will not prejudice either party as regards any subsequent action.

**SECTION 18: WAIVER OF JURY TRIAL**

Both Client and UES waive trial by jury in any action arising out of or related to the Agreement, and any Addendum to the Agreement.

**SECTION 19: CONTRACTUAL STATUTE OF LIMITATIONS**

To the extent that a statute of limitations for any cause of action against UES arising from this Agreement or any Addendum can be modified contractually in accordance with law, and the relevant statute of limitations for any claim arising of or relating to any this Agreement or any Addendum, or the services provided by UES thereunder, is greater than two (2) years, the relevant statute of limitations shall be two (2) years from the date UES last provided services thereunder. The parties agree that this provision is material to the decision of UES to enter into this agreement, that it is a reasonable measure to allocate and insure against risk, and that it does not violate public policy. This section shall not be construed as an agreement to increase the statute of limitations for any causes of action that are otherwise barred by law.

**SECTION 20: HEADINGS**

The headings in these General Conditions are for reference only and are not intended to form part of the contract between the Parties.

REVISED: 3/7/24





Mr. Carlos Quintero  
Freese and Nichols, Inc.  
10497 Town and Country Way, Suite 600  
Houston, TX 77024

February 20, 2025

Re: UES Proposal No. 110873  
Construction Materials Testing  
FM 2920 Lift Station Consolidation Phase 2 - 24 in. Sanitary Sewer (Preliminary)  
Tomball, TX

Dear Mr. Quintero:

UES Professional Solutions 44, LLC (UES), is pleased to submit this proposal for providing Construction Materials Testing (CMT) and related quality control services for the referenced project.

UES has integrated the resources of Alpha Testing, Riner Engineering, Rock Engineering and Testing and In-Control Technologies to form the largest geotechnical engineering, materials testing, special inspection and environmental services firm in the Texas Gulf Coast region. Our personnel and equipment resources are unmatched and we have the experienced staff to perform the necessary CMT services in accordance with the project requirements. In the Houston area, UES is accredited by the American Association for Laboratory Accreditation (A2LA) and meets the requirements of ASTM E329. We also participate in Cement and Concrete Reference Laboratory (CCRL) and AASHTO re:source proficiency sampling programs.

For the purpose of this proposal, we have estimated quantities and tests per our experience, with the information provided. The actual costs for CMT services can decrease or increase with changes in the scope of work and are heavily dependent on the contractor's work methods, production, and sequencing. This is only an estimate for budgetary purposes and UES's total fee will be based on the actual amount of time and laboratory testing required for the project. These services will be performed on a unit price basis in accordance with the attached Schedule of Services and Fees. UES is willing to re-evaluate our budget once a formal construction schedule is finalized.

UES utilizes a proprietary electronic laboratory data management and report generation system. CMT reports prepared in Adobe PDF format are emailed to the Client and their designees. Report turnaround time is typically one day. UES also provides an extranet where CMT reports can be accessed by the Client at any time. CMT reports are automatically posted to our extranet when they are emailed. Our system is designed to provide high quality, real-time information.

By execution of this proposal, the undersigned Client acknowledges and agrees that the document entitled "Terms and Conditions" has been provided or made available to Client and Client agrees that such Terms and Conditions shall be applied to the present Proposal and shall be fully binding upon Client. The Terms and Conditions are fully incorporated into this Proposal by reference as if set forth at length.

## FIRM PROFILE

UES is a registered Texas engineering firm (#813) and a Texas geoscience firm (#50341), meets the requirements of ASTM E-329, is AASHTO R-18 accredited, and has engineers licensed in multiple states. UES currently employs over 275 people.

UES recognizes that our client base faces challenges at every turn, either meeting a deadline, meeting a budget, or overcoming a field or design challenge. It is our internal challenge to make your challenges ours. Tell us what you need, we will take ownership, ask the needed questions, then be responsive in execution.

### BUSINESS LOCATIONS

#### Austin

2324 Ridgepoint Drive, Suite E  
Austin, Texas 78754  
Phone: 281-469-3347

#### Corpus Christi

6817 Leopard Street  
Corpus Christi, TX, 78409  
Phone: 361-883-4555

#### Dallas

2209 Wisconsin Street  
Dallas, TX 75229  
Phone: 972-620-8911

#### Fort Worth

5058 Brush Creek Road  
Fort Worth, TX 76119  
Phone: 817-496-5600

#### Houston – East

4667 Kennedy Commerce Drive  
Houston, Texas 77032  
Phone: 281-469-3347

#### Houston – North

14731 Pebble Bend Dr  
Houston, Texas, 77068  
Phone: 281-580-8892

#### Houston – West

15811 Tuckerton Road  
Houston, TX 77095  
Phone: 713-360-0460

#### Rio Grande Valley

11818 West Business Hwy 83, Unit 1  
La Feria, TX 78559  
Phone: 956-201-4797

#### Round Rock

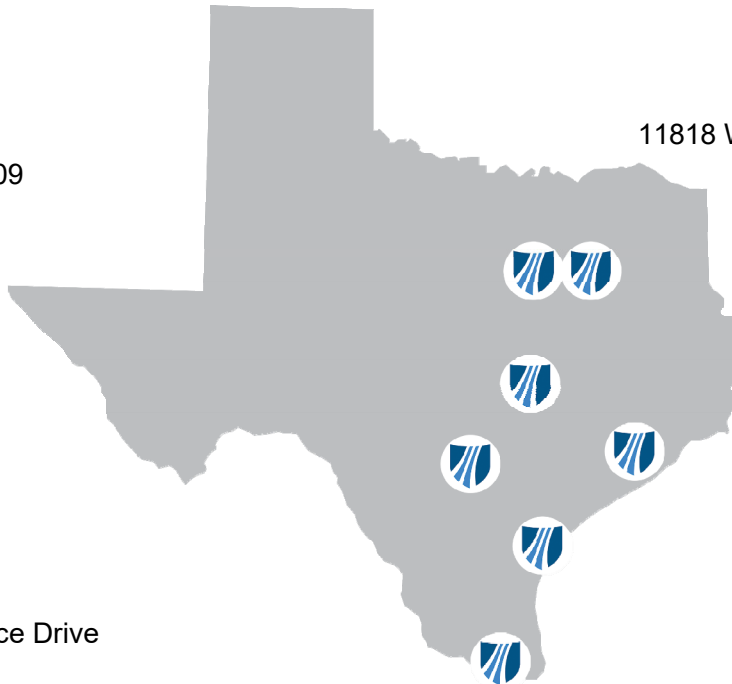
7 Roundville Lane  
Round Rock, TX, 78664  
Phone: 512-284-8022

#### San Antonio – East

4740 Perrin Creek, Suite 480  
San Antonio, TX 78217  
Phone: 210-249-2100

#### San Antonio – West

10856 Vandale Street  
San Antonio, TX, 78216  
Phone: 210-495-8000



### Quality Control

All testing equipment in UES's laboratories is calibrated on an annual basis using traceable standards (NIST or NISTL). Calibrations are confirmed by CCRL and AASHTO on a bi-annual basis during third-party inspections. Along with calibration of equipment, UES also maintains an internal QA/QC program to assure consistent and reliable test results. This program pertains to methodologies for performing tests that have been developed and expanded through years of experience.

We appreciate the opportunity to submit this proposal for CMT services and look forward to working with you during the construction phase of this project. If there are any questions concerning this proposal or if we can be of further assistance, please contact us at your convenience.

Respectfully submitted,

**UES**



Leah Martinez  
Project Estimating Manager

**CLIENT APPROVAL**

**ESTIMATED BUDGET: \$50,000.00**

Consultant offers the CLIENT the Proposal as described above. CLIENT may accept Consultant's offer by signing in the space provided below and returning a signed copy to Consultant. Such notification may be given by fax or by returning the original proposal. In the event the CLIENT authorizes work without returning a signed copy, the CLIENT agrees to be bound by the terms and conditions as stated herein. The proposal described above has been read, understood, and accepted by CLIENT effective as of the date that the executed proposal is returned to Consultant.

**EXECUTED BY CLIENT'S AUTHORIZED REPRESENTATIVE:** \_\_\_\_\_  
(signature)

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date Accepted: \_\_\_\_\_

CLIENT Business Name: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**ACCOUNTS PAYABLE INFORMATION**

A/P Contact Name: \_\_\_\_\_ A/P Contact Telephone: \_\_\_\_\_

\*A/P Contact Email: \_\_\_\_\_

*\*A/P Contact Email must be provided before UES can proceed with its proposed services*

**REPORT DISTRUBUTION**

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_ Email: \_\_\_\_\_



UES

Construction Materials Engineering and Testing  
Basic Services and Cost Estimate

Project Name: FM 2920 Lift Station Consolidation Phase 2 - 24 in. Sanitary Sewer (Preliminary); Tomball, TX

DESCRIPTION	Estimated Quantity	Unit Rate	Estimated Total
<b>CMT Testing</b>			
Not to exceed budget based on attached fee schedule	1	\$50,000.00	\$50,000.00
<b>ESTIMATED BUDGET</b>			<b>\$50,000.00</b>

**UES**  
Construction Materials Engineering and Testing  
Standard Unit Rates

Project Name: FM 2920 Lift Station Consolidation Phase 2 - 24 in. Sanitary Sewer (Preliminary); Tomball, TX

<b>DESCRIPTION</b>	<b>UNIT RATE</b>
<b><u>EARTHWORK</u></b>	
Engineering Technician services performing in-place field density testing (per hour)	\$58.00
Engineering Technician services for sample pick-up (per hour)	\$58.00
Overtime (in excess of 8 hours per day) (per hour)	\$87.00
Vehicle Trip Charge (per trip)	\$100.00
Nuclear Density Equipment Charge (per trip)	\$100.00
Moisture/Density Relationship of Soils	
Standard Proctor (ASTM D 698) (each)	\$250.00
Modified Proctor (ASTM D 1557) (each)	\$250.00
Target Moisture Proctors (per point) (each)	\$120.00
With Lime added in laboratory, add (each)	\$75.00
Atterberg-limit Determinations	
Natural (each)	\$85.00
With Lime, add (each)	\$85.00
No. 200 Sieve Analysis (each)	\$85.00
Free Swell Tests (each)	\$100.00
Lime Series, pH Method (Eades & Grim Method) (each)	\$375.00
Soluble Sulfate (Standard 8 Day turn around, Rush rates quoted upon request) (each)	\$125.00
Compressive Strength of Stabilized Sand (each)	\$60.00
Completion Letter (min)	\$500.00
Moisture Content Tests (each)	\$9.50
Engineering Review (per hour)	\$150.00
<b><u>CONCRETE</u></b>	
Engineering Technician services for molding concrete test specimens, performing slump, rebar & air tests and testing at batch plant (per hour)	\$58.00
Engineering Technician Services Overtime (in excess of 8 hours per day) (per hour)	\$87.00
Specimen pick-up (4 hour minimum) (per hour)	\$58.00
Vehicle Trip Charge (per trip)	\$100.00
Laboratory compression testing and reporting of concrete cylinders (each)	\$22.00
Reserve concrete cylinders not tested (each)	\$22.00
Engineering Review (per hour)	\$150.00

**UES Professional Solutions 44, LLC**  
**GENERAL CONDITIONS – TEXAS**

**SECTION 1: SCOPE OF SERVICES**

1.1 UES Professional Solutions 44, LLC (“UES”) will provide to Client the professional services described under the Scope of Services (“Services”) in the Professional Services Agreement (“Agreement”) between UES and Client to which these General Conditions form a part.

1.2 UES shall provide revised or additional services, including changes to the Services necessary due to changed or unforeseen conditions, only in accordance with a written Addendum or Change Order (collectively, “Addendum”) to the Agreement agreed to by UES and Client, and only to the extent set forth in that Addendum. Either UES or Client may communicate in writing any requested changes in the nature and scope of the Project; in either case, the changes shall only be executed upon written approval of the Addendum by UES and Client.

1.3 Unless otherwise provided for in the Agreement, the Services will be provided on a standard work schedule of Monday through Friday 8:00 AM to 5:00 PM (excluding holidays), and samples will be analyzed on a standard five (5) to seven (7) business day laboratory turnaround time.

1.4 UES shall not be responsible for any delays, fees or costs associated with adverse or unusual weather conditions that prevent the Services from being safely conducted.

1.5 UES shall provide the personnel, equipment, Level D personal protective equipment (as defined by the Occupational Safety and Health Administration (“OSHA”), and other materials necessary to provide the Services. UES, at its sole discretion, may retain subcontractors or other third-parties to assist it in the provision of the Services.

1.6 Client will provide UES with written authorization to proceed with the Services and any associated fee (e.g., retainer) prior to UES initiating work on the Services.

1.7 The terms “Project” and “Site” are used interchangeably in these General Conditions refer to the land and/or construction project on which or to which UES is to provide Services under this Agreement.

1.8 UES shall perform all Services hereunder as an independent contractor, and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant, or employer and employee between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party. UES also agrees not to be treated, or seek to be treated, as an employee of Client for any purpose, including for the purposes of fringe benefits provided by Client, or for disability income, social security taxes and benefits, Federal unemployment compensation taxes, State unemployment insurance benefits and Federal income tax withholding at sources. UES hereby represents that UES has and at all times will maintain timely payments of all taxes due to the Internal Revenue Service and all other government agencies, including withholding and all other taxes.

**SECTION 2: PROFESSIONAL STANDARD OF CARE**

2.1 UES will provide its services under this Agreement in a manner consistent with the level of professional care and skill ordinarily exercised by similar professionals practicing contemporaneously under similar conditions in the locality of the Project. NO OTHER WARRANTY CONCERNING THE SERVICES UES PROVIDES UNDER THE AGREEMENT OR ANY ADDENDUM, EXPRESS OR IMPLIED, IS MADE, AND ALL OTHER WARRANTIES, INCLUDING THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW.

2.2 Client understands that subsurface investigations may involve drilling, boring, excavating or sampling through varied subsurface soil and water strata which, consistent with the prevailing standard of professional care, may result in the unavoidable or inadvertent cross-mingling of soil and water and any Hazardous Substances or constituents contained in them, and that this risk cannot be eliminated despite the exercise of professional care. IF SUCH SUBSURFACE INVESTIGATIONS ARE PART OF THE SERVICES, CLIENT WAIVES ANY CLAIM AGAINST UES, AND SHALL INDEMNIFY, DEFEND, AND HOLD UES HARMLESS FROM ANY CLAIM OR LIABILITY FOR INJURY OR LOSS ARISING FROM CROSS-CONTAMINATION RELATED TO SUCH SUBSURFACE EXPLORATIONS INCLUDING, WITHOUT LIMITATION, ANY CLAIM OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

2.3 UES will take reasonable precautions to minimize damage to the Site, but it is understood by Client that, in the normal course of the provision of the Services, including sampling or drilling, some damage to or alteration of the Site is possible. The repair of such damage shall not be part of the Services unless explicitly specified in writing in the Agreement.

2.4 The Services provided by UES are not intended to be and shall not be construed as providing legal advice, and UES shall not be responsible for Client’s compliance with any applicable laws.

2.5 Client and Client’s personnel and contractors shall promptly inform UES of any actual or suspected defects in UES’s services, to help UES take those prompt and effective measures that in UES’s opinion will help minimize the consequences of any such defect. Client’s payment in full of the amount owed for services rendered shall be taken to mean that Client is satisfied with and has accepted UES’s services.

**SECTION 3: SITE ACCESS, SITE CONDITIONS AND CLIENT RESPONSIBILITIES**

3.1 Client will grant or obtain at its expense lawful and safe access to the Site as needed for UES to perform the Services and will notify all affected persons and entities in writing of UES’s presence. The access shall be adequate to allow UES to conduct the Services, including bringing and storing equipment and tools on the Site and any necessary access to exterior and interior areas. UES shall not be responsible for any delays, fees or costs caused by delayed or restricted access that prevents or slows the delivery of the Services by UES.

3.2 If the Site is not owned or operated by Client or the Client does not otherwise have the authority to grant UES lawful access, Client shall be responsible for obtaining, at its own expense, an access agreement for the Site and shall provide UES a copy of such access agreement at least three business days in advance of the date contemplated for the first Site access related to the Project. UES reserves the right to delay, without penalty, any Site visit and the provision of Services under the Agreement if a site access agreement, in UES’ reasonable judgment and discretion, would impose conditions, liabilities or risks on UES in excess of those set forth in these General Conditions or the Agreement. IF THE SITE IS NOT OWNED BY CLIENT, CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES AND SUCCESSORS (“UES INDEMNITEES”) HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES (INCLUDING ATTORNEY’S FEES) ALLEGED BY THE SITE OWNER OR THE SITE OWNER’S EMPLOYEES, AGENTS, CONTRACTORS OR OTHER PERSONS OR ENTITIES ARISING FROM UES’S PERFORMANCE OF SERVICES UNDER THE AGREEMENT AT SUCH SITE INCLUDING, WITHOUT LIMITATION, ANY CLAIM, LOSS, DAMAGE OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

3.3 Unless otherwise expressly provided for in the Agreement, Client will be responsible for communicating and coordinating with the Site owner(s) with respect to access necessary to the provision of the Services, including security procedures, opening gates, providing access to buildings, avoiding conflicts between provision of the Services and any commercial or manufacturing activities on the Site, and moving vehicles or other equipment that may interfere with the agreed upon Site activities and the Site access necessary to conduct such activities, including opening gates to allow equipment to gain access to proposed work areas, areas to store necessary equipment, as well as access to the interiors of any onsite buildings.

3.4 Client shall be responsible for the safety of the Site where the Project is conducted and for providing a safe environment for UES to provide the Services. UES shall be responsible for the safe and compliant conduct of its personnel at the Site and shall also comply with the reasonable and lawful work rules for the Site. As required by applicable laws, UES will prepare a site-specific Health and Safety Plan (HASP) applicable to its personnel for the Services provided at the Site. UES shall not be responsible for the safety of other personnel at the Site, nor shall it be responsible for ensuring that the Site complies with environmental, health and safety laws, or reporting any unsafe conduct or non-compliance that it may observe. If UES encounters conditions at the Site that are unsafe for its personnel, it reserves the right at its sole discretion to suspend or halt work until such conditions are cured. UES shall not be responsible for any fees, costs or damages associated with any safety-related delays. Unless otherwise provided for in the Agreement, UES shall not work in conditions that require personal protective equipment beyond that classified as Level D by OSHA.

3.5 Client shall inform UES of any reporting or other requirements imposed by any third parties, such as federal, state, or local entities with respect to environmental matters relevant to the Services, Client shall assume responsibility to provide any required notice to any third party, and it shall secure the necessary permits or permissions from any third parties (including governmental authorities) required for UES's provision of the Services. If included in the Agreement, Client may authorize UES to obtain certain permits on Client's behalf, in which case Client shall be responsible for any fees or expenses incurred by UES with respect to obtaining such permits.

3.6 Client shall provide UES with all necessary information to perform its services, including, but not limited to, maps, site plans, reports, surveys, plans and specifications, environmental and hydrogeological investigations and studies, other designs, documents, and any other existing environmental information about the Site. Client assumes all liability for information not provided to UES that could affect the quality or sufficiency of the Services UES provides. If UES encounters undisclosed or unforeseen conditions that may cause material delays or an increase in fees or costs, UES shall inform Client and any changes in schedule, fees or costs shall be addressed in an Addendum. UES shall not be responsible for any delays, fees or costs caused by undisclosed or unforeseen conditions.

3.7 Client is responsible for accurately identifying to UES in writing the existence and location of all subterranean structures and utilities on or affecting the Site (including the type and location of utility lines) and the services to be provided by UES. UES will take reasonable precautions to avoid affecting subterranean structures and utilities disclosed to it in writing by Client. If included in the Agreement, Client may authorize UES to conduct applicable public utility identification and clearance requirements on behalf of Client. CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES INDEMNITEES HARMLESS FOR ANY CLAIMS, LOSSES, DAMAGES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES ARISING FROM DAMAGE DONE TO ANY SUBTERRANEAN STRUCTURES OR UTILITIES, OR FOR THE RELEASE OF ANY HAZARDOUS SUBSTANCES FROM ANY SUCH STRUCTURES OR UTILITIES, THAT ARE NOT ACCURATELY IDENTIFIED AND LOCATED IN WRITING AND DISCLOSED TO UES BY CLIENT BEFORE UES COMMENCES ITS WORK INCLUDING, WITHOUT LIMITATION, ANY CLAIM, LOSS, DAMAGE OR LIABILITY ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

3.8 Unless otherwise stated in the Agreement, any soil or groundwater monitoring activities that are included in the Services are based on the assumption that soil borings and monitoring wells can be installed using standard truck-mounted drilling equipment, the locations are accessible to such equipment, and that surface conditions at each location consists of non-reinforced asphalt or concrete not exceeding six (6) inches in thickness and no concrete or asphalt cutting will be required. If UES encounters materially different conditions at the Site, UES shall inform Client and an Addendum shall be agreed to that addresses any changes in schedule, fees or costs associated with the changed conditions.

#### SECTION 4: HAZARDOUS SUBSTANCES AND ENVIRONMENTAL CONDITIONS

4.1 Client represents it has informed UES of all known or suspected Hazardous Substances on, under or near the Site of which it is aware, and that it has provided UES with all studies, reports, investigations, or similar documents in its possession about the environmental conditions at the Site, including any documents and correspondence involving Federal, State or local environmental, health or safety regulatory notifications.

4.2 For purposes of the Agreement and these General Conditions, the term "Hazardous Substances" includes materials defined or regulated as hazardous substances, hazardous materials, hazardous wastes, hazardous constituents, solid wastes, pollutants, or toxic substances under any Federal, State or local environmental, health, safety or natural resources law, statute, regulation or ordinance, including but not limited to petroleum products, polychlorinated biphenyls, per- and polyfluoroalkyl substances, asbestos, and any other material or substance listed or identified by the United States Environmental Protection Agency or any similar State or local agency as presenting a potential danger to health, safety or the environment.

4.3 Except to the extent required by law, UES shall not be responsible for making any disclosures to governmental agencies or the Site owner regarding the presence or release of Hazardous Substances on, under, from or around a Site.

4.4 [FOR INVESTIGATION / REMEDIATION PROJECTS] The discovery of Hazardous Substances or other environmental conditions on, under or near the Site not contemplated within the Services may constitute a changed condition, necessitating an Addendum or Change Order. In the event of the discovery of Hazardous Substances or other environmental conditions not contemplated within the Services, Client agrees to compensate UES for all expenses incurred or caused by the discovery, including but not limited to those related to worker protection and exposure, emergency response actions and equipment decontamination.

[FOR GEOTECH PROJECTS ONLY] Client agrees that the discovery of Hazardous Substances or other environmental conditions on, under or near the Site not contemplated within the Services may constitute a changed condition, necessitating an Addendum or Change Order. Although unlikely, Client acknowledges that such a discovery may make it necessary for UES to take immediate measures to protect the health and safety of its employees and other persons, or to arrange for others to do so, including and up to delaying or terminating work. Client agrees to compensate UES for all expenses incurred or caused by the discovery of unanticipated Hazardous Substances or environmental conditions encountered at the Site, including but not limited to those related to worker protection and exposure, emergency response actions and equipment decontamination.

4.5 [FOR INVESTIGATION / REMEDIATION PROJECTS] All substances on, in, or under Client's site, or obtained from Client's site as samples or as byproducts of the sampling process, shall be Client's property. UES shall not be required to sign or certify a waste manifest, disposal ticket, or similar document relating to the transportation or disposal of wastes or Hazardous Substances. UES may serve as Agent for Client if requested under a separate agreement and authorization. Client shall be considered the "generator" of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* and agrees that it shall assume all duties as "generator" of any waste material associated with the Services. Further, Client agrees that UES is not a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances and shall not be so identified on any document.

[FOR GEOTECH PROJECTS] All substances on, in, or under Client's site, or obtained from Client's site as samples or as byproducts of the sampling process, shall be Client's property. Unless otherwise expressly specified in the Agreement or the Services, the characterization, management and disposition of substances, including Hazardous Substances, generated during the Services (including, but not limited to, wastes, samples, produced soils or fluids, cuttings, or protective gear or equipment, etc.) is the sole responsibility of Client. Client shall be considered the "generator" of any hazardous or other wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* and agrees that it shall assume all duties as "generator" of any waste material associated with the Services. Further, Client agrees that UES is not and shall not be identified as a generator, storer, treater, transporter, arranger, or disposer of wastes or Hazardous Substances on any document. Unless specifically provided for in the Agreement, UES shall not have any res

with respect to the storage or preservation of samples, and Client agrees that UES is not responsible or liable to Client for any loss of samples that are shipped to a testing facility or retained in storage.

4.6 UES shall not have custody of any monitoring wells or permanent sampling locations installed as part of the Project, and shall not be responsible for proper maintenance, repair, or closure of such wells, unless otherwise provided for in the Agreement.

4.7 CLIENT AGREES TO DEFEND, INDEMNIFY, RELEASE, AND HOLD UES INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES (INCLUDING ATTORNEY'S FEES AND CONSULTANTS' FEES, COSTS OF DELAY OF THE SERVICES, AND ANY COSTS ASSOCIATED WITH POSSIBLE REDUCTION TO THE VALUE OF THE PROJECT OR THE SITE IN WHICH IT IS SITUATED) ARISING FROM (I) UES' DISCOVERY OF OR ITS EMPLOYEES' OR SUBCONTRACTORS' EXPOSURE TO HAZARDOUS SUBSTANCES OR SUSPECTED SUBSTANCES RELATED TO THE SERVICES, TO THE EXTENT CAUSED BY CLIENT'S NEGLIGENCE OR WILLFUL MISCONDUCT; (II) ANY DISCLOSURES UES IS REQUIRED TO MAKE BY LAW REGARDING HAZARDOUS SUBSTANCES OR ENVIRONMENTAL CONDITIONS AT A SITE; (III) ANY CLAIMS MADE ALLEGING THAT (A) UES IS AN OWNER OR OPERATOR OF THE SITE AT WHICH THE SERVICES ARE RENDERED; (B) UES IS THE GENERATOR, STORER OR TREATER OF HAZARDOUS SUBSTANCES AT SUCH SITE; OR (C) THAT UES ARRANGED FOR THE TRANSPORTATION OR DISPOSAL OF ANY HAZARDOUS SUBSTANCES FROM THE SITE; (IV) ANY VIOLATION BY CLIENT OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, ORDER, DECREE OR ORDINANCE RELATED TO HAZARDOUS SUBSTANCES; OR (V) ANY CLAIMS MADE BY THIRD-PARTIES WITH RESPECT TO ALLEGED EXPOSURES TO OR DAMAGES CAUSED BY HAZARDOUS SUBSTANCES AT OR FROM THE SITE OR DURING OR RELATED TO ANY PROJECT OR THE PROVISION OF SERVICES, TO THE EXTENT CAUSED BY CLIENT'S NEGLIGENCE OR WILLFUL MISCONDUCT.

#### **SECTION 5: BILLING AND PAYMENT**

5.1 UES will submit invoices to Client in accordance with the Agreement for the specific Project. If the Agreement includes a retainer, the retainer must be received by UES before it will initiate work on the Project.

5.2 Payment will be due 30 days after presentation of invoice. Client will pay a finance charge of one and one-half percent (1 1/2 %) per month, or the maximum rate allowed by law, on all past due invoices. If UES incurs any expenses to collect overdue invoices, Client will also be liable for all sums incurred for reasonable attorneys' fees, expert witness fees, time of UES's employees, expenses and court costs, and interest.

5.3 Client agrees that UES may refuse to release to Client any reports, findings, data and other work product until it has been paid in full for services rendered. UES reserves, and does not waive, any lien rights it may have for unpaid professional services. Client agrees that all reports and other work furnished to Client or its agents that Client has not timely paid for will be returned upon demand and will not be used by the Client for any purpose.

5.4 UES shall have no obligation under this Agreement or any Addendum to provide expert consultant or expert witness services in litigation, arbitration, or any other dispute resolution proceeding, to produce its work product in discovery, to undertake any further investigation or analysis or prepare a report in connection with any such proceeding, or to make available for testimony its current or former employees or consultants. The Parties will execute a new agreement for any such services. In the absence of a new executed agreement for such services, Client will pay UES 150% of its prevailing rates and expenses for the time spent by UES employees and costs incurred on any such additional tasks.

5.5 Services provided at the Client's request outside normal business hours will be performed for an additional fee to be negotiated and reflected in the Agreement or an executed Addendum, or, if no such fee is negotiated, at 150% of UES standard rates.

5.6 Reimbursable expenses, those outside of the scope of the proposed services, are charged to the Client at cost plus fifteen (15) percent and include the following items:

(i) Out of scope reproduction of plans, specifications and other documents, including plans and documents necessary for submission to regulatory agencies, but excluding documents reproduced for use by UES and any of its consultants.

(ii) Out of scope permit application and filing fees advanced by UES. Such fees will be invoiced to Client at cost.

(iii) The cost of equipment rental including, where applicable, equipment operators and subcontracted services, such as authorized photogrammetry, testing services, laboratory services, archeological services, and other specialized services, excluding those services which are explicitly included in the UES proposal. If the services covered by this Agreement are subject to local or state taxes or fees, such additional costs will be charged to the project and are subject to reimbursement as provided herein.

5.7 Fees and schedule commitments are subject to renegotiations for unreasonable delay caused by Client's failure to provide specified facilities or information, or for delays caused by unpredictable occurrences, or force majeure events such as fires, floods, strikes, riots, unavailability of labor or materials or services, acts of God or of public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above may result in additional costs (reflecting a change in scope) beyond that outlined in the proposed Agreement. UES shall have the right to increase its compensation payable by the Client to UES in the event that UES must modify services, facilities or equipment to comply with laws or regulations that become effective after execution of this Agreement, provided UES gives the Client fifteen (15) days prior notice as to the cause for escalation and the additional amounts involved.

5.8 The fees and charges reflected in UES's proposal for services are exclusive of any sales, use, personal property, value added and goods/services taxes. Where applicable, such taxes shall appear as a separate item on UES's invoice and Client shall be liable for the payment of such taxes to UES. Notwithstanding the foregoing, Client shall not be responsible for any foreign, federal, state or local taxes based on UES's net income or receipts, or such other taxes based on UES doing business in any particular jurisdiction.

#### **SECTION 6: INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

6.1 All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES during the provision of the Services, are instruments of service, and shall remain the property of UES. Neither Client nor any other entity shall change or modify UES's instruments of service. UES shall retain sole and exclusive ownership of all ideas, concepts, theories, improvements, designs, original works of authorship, formulas, processes, models, software, algorithms, inventions, know-how, techniques, compositions of matter and any other information owned by UES prior to the date of this Agreement or created or modified by UES during the provision of the Services.

6.2 UES will retain final reports generated as part of the Services for a period of at least five years following submission of such reports or completion of the Services, whichever is later. UES will make those records available to the Client in a reasonable time and manner, subject to payment of a reasonable fee for the time of UES employees to assemble and transmit those documents.

6.3 The Services and all deliverables provided as part of the Services (including but not limited to reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by UES), are prepared for the sole and exclusive use of Client, and Client is the only entity to which UES owes any duty, in contract or tort, pursuant to any law or under this Agreement. Any information or deliverables generated by UES during the provision of the Services may not be given or disclosed to any other entity, or used or relied upon by any other entity, without the express written consent of UES. Such written consent may take the form of a "reliance letter" which must be agreed to by such other person or entity to whom the Services and Deliverables may be disclosed, and for which a separate fee will be charged. UES shall be entitled to injunctive relief preventing/prohibiting any disclosure, reliance or attribution prohibited hereunder, and Client shall release, indemnify, defend, and hold harmless UES from any losses (including attorney's fees) arising from or related to such unauthorized disclosure, attribution or reliance.

6.4 Each party may disclose to the other party certain information that it considers to be confidential ("Confidential Information") provided such information is disclosed in writing and clearly marked or, if orally disclosed, promptly thereafter reduced to writing and clearly marked "Confidential." In no event shall Confidential Information include information that: (a) is or becomes publicly available other than through a breach of the Agreement; (b) is known to the party receiving such information prior to disclosure or is independently developed by such party subsequent to such disclosure without reference to Confidential Information provided hereunder; or (c) is subsequently lawfully obtained by the party receiving such information from a third party without obligations of confidentiality. Each party agrees that it (a) will not disclose or divulge the other party's Confidential Information to any person, (b) will not use the other party's Confidential Information for its own benefit or the benefit of others, (c) will employ at least the same degree of care in protecting Confidential Information as it employs in protecting its own confidential information, and (d) will, upon termination of the Agreement, or at any time at the request of the other party, return to the other party or destroy all copies of the other party's Confidential Information. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information to its employees, subcontractors and authorized agents who have a need to know such confidential information to fulfill its obligations under this Agreement. In the event a party receives a subpoena or other validly issued administrative or judicial process requesting the disclosure of the other party's Confidential Information, such party will promptly notify the other party and tender to it the defense of such demand and will cooperate (at the other party's expense) with the defense of such demand. Unless the demand shall have been timely quashed or extended, the party receiving the demand shall thereafter be entitled to comply with such demand when and to the extent required by law.

#### **SECTION 7: RISK ALLOCATION**

7.1 CLIENT AGREES WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT AND ANY ADDENDUM THAT THE AGGREGATE LIABILITY OF UES FOR ANY AND ALL CLAIMS, LOSSES, COSTS, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES, SHALL NOT EXCEED THE GREATER OF \$50,000.00 OR THE FEE ACTUALLY PAID BY CLIENT TO UES FOR THE SERVICES. IN CONSIDERATION FOR PAYMENT BY THE CLIENT OF AN ADDITIONAL SUM OF \$1,000, UES AGREES THAT ITS AGGREGATE LIABILITY WITH RESPECT TO ANY AND ALL CLAIMS, LOSSES, COSTS, AND DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND EXPENSES AND EXPERT WITNESS FEES AND EXPENSES, ARISING FROM SERVICES PROVIDED UNDER THIS AGREEMENT AND ANY ADDENDUM THERETO SHALL BE THE GREATER OF \$50,000 OR UP TO \$1,000,000 IN COVERAGE BY ITS PROFESSIONAL LIABILITY POLICY (INCLUDING ANY DEDUCTIBLE OR SELF INSURED RETENTION). The terms "claim" or "claims" mean any claim in contract, tort, or statute alleging errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligence, negligent misrepresentation, and any other basis giving rise to liability in law or equity.

7.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY PROVIDED FOR IN THE AGREEMENT OR ANY ADDENDUM, UES SHALL NOT BE LIABLE TO CLIENT FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO REDUCTION IN VALUE OF REAL PROPERTY, PENALTIES ASSOCIATED WITH NON-COMPLIANCE WITH LAW, LOST PROFITS, LOSS OF USE, FINANCING COSTS AND LOST SAVINGS) INCURRED BY CLIENT. ITS EMPLOYEES, CONSULTANTS, AGENTS, CONTRACTORS OR SUBCONTRACTORS.

7.3 Client agrees that it will not seek damages in excess of this contractually agreed-upon limitation against any other person or entity who may in turn join UES as a third-party defendant for such damages, or where such person or entity may seek recovery from UES in a separate proceeding. CLIENT SHALL INDEMNIFY, DEFEND AND HOLD UES INDEMNITEES HARMLESS FOR ANY SUCH DAMAGES (INCLUDING ATTORNEY'S FEES) AWARDED TO ANY OTHER PERSON OR ENTITY AS A RESULT OF ANY LITIGATION, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING COMMENCED BY CLIENT AGAINST ANY SUCH PERSON OR ENTITY FOR DAMAGES FOR WHICH UES MAY BE IN WHOLE OR PART BE HELD LIABLE INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

#### **SECTION 8: INSURANCE**

8.1 UES represents it has Worker's Compensation insurance in force, that it has commercial general liability coverage in the amount of \$1,000,000.00 and has professional liability insurance in the amount of \$1,000,000.00.

8.2 Client shall maintain such insurance as is necessary to fully underwrite Client's defense and indemnity obligations set forth herein, and shall, upon request by UES, provide proof to UES to verify such insurance.

#### **SECTION 9: INDEMNITY**

9.1 IN ADDITION TO AND NOTWITHSTANDING ANY OTHER PROVISION IN THESE GENERAL CONDITIONS, CLIENT AGREES, TO THE FULLEST EXTENT PROVIDED BY LAW, TO RELEASE, DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO UES), INDEMNIFY, AND HOLD UES, INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, AFFILIATES AND SUCCESSORS ("UES INDEMNITEES") HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES FROM OR BY ANY PERSON OR ENTITY ARISING FROM (1) ACTS OR OMISSIONS BY CLIENT, CLIENT'S AGENTS, STAFF, AND OTHERS EMPLOYED BY OR CONTRACTED TO CLIENT, INCLUDING ARCHITECTS, ENGINEERS, CONTRACTORS, SUBCONTRACTORS, AND CONSULTANTS, WHETHER OR NOT UES IS RESPONSIBLE IN WHOLE OR IN PART FOR THE ACTS OR OMISSIONS FOR WHICH CLIENT IS INDEMNIFYING UES AND (2) THE PROVISION OF THE SERVICES BY UES EXCEPT TO THE EXTENT CAUSED BY UES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SUCH EXCEPTION SUBJECT TO THE LIMITS SET FORTH IN SECTION 7. FOR THE AVOIDANCE OF DOUBT, CLIENT'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 9.1 INCLUDE, WITHOUT LIMITATION, INDEMNIFICATION FOR ANY CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING IN WHOLE OR IN PART FROM THE ACTIONS OR INACTIONS OF UES.

9.2 UES AGREES TO INDEMNIFY, AND HOLD CLIENT HARMLESS FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES OR LIABILITIES ARISING TO THE EXTENT SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY UES IN THE PROVISION OF THE SERVICES, SUBJECT TO THE LIMITS SET FORTH IN SECTION 7.

9.3 To the extent either party's damages are covered by available insurance, Client and UES waive all rights of subrogation against each other and against the contractors, subcontractors, consultants, agents, and employees of the other, except such rights as they may have to the proceeds of such insurance.

#### **SECTION 10: DISPUTE RESOLUTION**

10.1 All claims, disputes, and other matters in controversy between UES and Client arising out of or in any way related to this Agreement or any Addendum shall be decided by binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, UES shall not be required to arbitrate any legal and/or equitable claims (including statutory and equitable liens) for collection of monies due. The successful party in any such action will be entitled to recover its reasonable attorneys' fees, expert witness fees, and other claim-related expenses and court costs incurred, and also the time value at prevailing rates of its employees reasonably incurred in prosecuting or defending the claims, with any claims against UES subject to the limitations in Section 7.

10.2 Notwithstanding the foregoing, all claims, including for negligence or any other cause whatsoever that the Client has or claims to have against UES, shall be deemed waived unless (i) Client notifies UES of the claim or claims within thirty (30) days of discovery thereof, and (ii) i



contends that a claim exists against UES for negligence or another violation of a standard of care owed by UES, Client has first provided UES with a written certification executed by an independent design professional currently practicing in the same discipline as UES. The certification shall: a) identify the name of the professional; b) specify each and every act or omission that the certifier contends is a violation of the standard of care identified in the Proposal Agreement; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to UES not less than thirty (30) calendar days prior to the institution of any arbitration or judicial proceeding.

10.3 NOTWITHSTANDING THE FOREGOING, UES SHALL HAVE NO LIABILITY FOR ANY CLAIM DISCOVERED BY CLIENT MORE THAN ONE YEAR AFTER DELIVERY OF THE LAST ISSUED REPORT BY UES FOR THE SERVICES DESCRIBED IN THE PROPOSAL AGREEMENT.

#### **SECTION 11: TERMINATION**

11.1 This Agreement may be terminated by either party for cause upon seven (7) days written notice and opportunity to cure in the event of a material breach by the other party, or in the case of a force majeure event such as terrorism, act of war, riot, insurrection, strike, declared public health emergency, flood, unusual weather condition, or act of God that continues or affects the Site for more than seven (7) calendar days. Such termination shall not be effective if such material breach or force majeure event has been remedied before expiration of the period specified in the written notice. In the event of any termination, UES shall be paid for Services (including any related costs and expenses) performed up to the termination notice date plus reasonable termination expenses.

11.2 UES and Client may terminate this Agreement at any time by mutual written consent.

11.3 In the event of termination or a suspension for more than three months of the Project for which these Services are to be provided, UES may in its sole discretion complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs incurred by UES in completing such analyses, records, and reports.

#### **SECTION 12: REVIEWS, INSPECTIONS, TESTING, AND OBSERVATIONS**

12.1 If the Services include oversight, monitoring or observation of work being conducted by third parties (other than UES subcontractors), such services shall be conducted solely to determine that the work being overseen, monitored, or observed is in general conformity to the contractual requirements between Client and such third parties. Client shall have sole responsibility and authority to reject, suspend or stop the work of such third parties, or modify or terminate any agreement between Client and such third parties.

12.2 UES shall not have the responsibility or authority to stop, suspend, or modify the work of such third parties, and does not guarantee that work it inspects conforms in all respects to the design, or to applicable laws, statutes, regulations, rules or codes, and it shall have no liability for design or construction defects, or the failure of Client's designers or contractors to comply with their contractual obligations.

12.3 Neither the activities of UES pursuant to this Agreement, nor the presence of UES or its employees, representatives, or subcontractors on the Project Site, shall be construed to impose upon UES any responsibility for means or methods of work performance, superintendence, sequencing of construction, or safety or environmental conditions or compliance at the Project Site. Client acknowledges that Client or its contractor is solely responsible for Project jobsite safety and compliance with environmental, health and safety laws.

12.4 Client is responsible for scheduling all inspections and construction materials testing ("CMT") activities of UES. UES will not be responsible for tests and inspections that it does not perform due to Client's failure to timely schedule work.

12.5 Client shall at the time of execution of the Agreement provide UES with a proposed schedule for tests and inspections UES shall perform. Client will give reasonable notice of all changes to that schedule. UES shall not be required to conduct any tests or inspections on less than 72 hours written notice, nor after normal business hours or on weekends or holidays.

#### **SECTION 13: SOLICITATION OF EMPLOYEES**

Client agrees that during the term of the Agreement, and for a period of one (1) year after the last date on which UES has provided services hereunder, Client shall not, directly or indirectly, solicit or attempt to solicit for employment, or contract directly or indirectly with, any employee of UES except as authorized in writing by UES. Client agrees that its breach of this Section shall cause UES irreparable harm, and that UES may, in addition to recovering any provable damages, enforce this obligation by injunction.

#### **SECTION 14: NO ASSIGNMENT**

Neither Client nor UES may delegate, assign or transfer its rights or obligations under the Agreement for any reason without the written consent of the other party. For avoidance of doubt, this provision does not affect UES' right, at its sole discretion, to use contractors or subcontractors in the performance and delivery of the Services.

#### **SECTION 15: GOVERNING LAW**

15.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the conflict of laws provisions of the State of Texas to the extent such principles or rules would require or permit the application of the laws of any other jurisdiction.

15.2 If any of the provisions of this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired and will survive. Limitations of liability and indemnities provided for will survive termination of this Agreement for the period of all applicable statutes of limitations to which they relate.

15.3 **WITH RESPECT TO CLIENT'S INDEMNIFICATION OBLIGATIONS HEREUNDER, THESE TERMS AND CONDITIONS COMPLY WITH THE REQUIREMENT, KNOWN AS THE EXPRESS NEGLIGENCE RULE, TO EXPRESSLY STATE IN A CONSPICUOUS MANNER TO AFFORD FAIR AND ADEQUATE NOTICE THAT THESE TERMS AND CONDITIONS CONTAIN PROVISIONS REQUIRING ONE PARTY TO BE RESPONSIBLE FOR THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANOTHER PARTY.**

#### **SECTION 16: INTEGRATED AGREEMENT**

16.1 This Agreement, and any Addendum represent and contain the entire and only agreement and understanding among the parties with respect to the subject matter of their subject matter, and they supersede all prior or contemporaneous oral and written agreements, understandings, representations, inducements, promises, communications, and conditions between the parties. No agreement, understanding, representation, inducement, promise, or condition with respect to the subject matter of this Agreement shall be relied upon by the parties unless expressly incorporated herein.

16.2 In the event any provision of the Agreement or these General Conditions shall be invalid, illegal or unenforceable in any respect, such a provision shall be considered separate and severable from the remaining provisions of this Agreement, and the validity, legality or enforceability of any of the remaining provisions of this Agreement shall not be affected or impaired by such provision in any way.

#### **SECTION 17: NO AMENDMENT**

17.1 The Agreement, including these General Conditions, may not be amended, or modified except by a writing signed by both parties.

17.2 Failure by either party at any time to enforce any obligation by the other party, to claim a breach of any term of the Agreement or to exercise any power agreed to hereunder will not be construed as a waiver of any right, power or obligation under the Agreement, will not affect any subsequent breach, and will not prejudice either party as regards any subsequent action.

**SECTION 18: WAIVER OF JURY TRIAL**

Both Client and UES waive trial by jury in any action arising out of or related to the Agreement, and any Addendum to the Agreement.

**SECTION 19: CONTRACTUAL STATUTE OF LIMITATIONS**

To the extent that a statute of limitations for any cause of action against UES arising from this Agreement or any Addendum can be modified contractually in accordance with law, and the relevant statute of limitations for any claim arising of or relating to any this Agreement or any Addendum, or the services provided by UES thereunder, is greater than two (2) years, the relevant statute of limitations shall be two (2) years from the date UES last provided services thereunder. The parties agree that this provision is material to the decision of UES to enter into this agreement, that it is a reasonable measure to allocate and insure against risk, and that it does not violate public policy. This section shall not be construed as an agreement to increase the statute of limitations for any causes of action that are otherwise barred by law.

**SECTION 20: HEADINGS**

The headings in these General Conditions are for reference only and are not intended to form part of the contract between the Parties.

REVISED: 3/7/24





## Gorrondona & Associates, Inc

Land Surveying • GIS • Mobil LiDAR • Aerial Mapping • Asset Management

Freese & Nichols, Inc.  
Attn: Mr. Erik Lopez, EIT  
10497 Town and County Way, Suite 500  
Houston, Texas 77024

March 12, 2025

via email: [erik.lopez@freese.com](mailto:erik.lopez@freese.com)

**Re: CITY OF TOMBALL WASTEWATER SYSTEM IMPROVEMENTS PROJECT  
CITY OF TOMBALL, HARRIS COUNTY, TEXAS**

Dear Mr. Lopez:

Gorrondona & Associates, Inc. (G&AI) is pleased to submit this proposal for professional land surveying services for the above referenced project. The following itemized surveying services are to be provided by Gorrondona & Assoc. Inc.:

### **CITY OF TOMBALL WASTEWATER SYSTEM IMPROVEMENTS PROJECT**

#### **ADDITIONAL RIGHT-OF-WAY SURVEY**

1. G&AI will prepare metes and bounds descriptions with exhibits on letter size for a total of up to seventeen (17) proposed permanent easements, temporary construction easements or CenterPoint Energy crossing documents meeting the City of Tomball's and/or CenterPoint standards. Permanent and Temporary Construction easements or CenterPoint crossing documents will be on a per document basis, for a fee of **\$1,750.00** per document.
2. Deliverables shall include up to seventeen (17) proposed permanent easements, temporary construction easements or CenterPoint Energy crossing documents, signed and sealed originals.

**ADDITIONAL RIGHT-OF-WAY SURVEYS NOT TO EXCEED AMOUNT** **= \$30,000.00**

Revisions and/or addition of items or services not included above will be provided as authorized by the appropriate Freese & Nichols personnel and will be confirmed with an approved Change Order prior to commencement of work, with billing for these services to be monthly in accordance with the attached Rate Schedule, which shall be a part hereto. Thank you for considering Gorrondona & Associates, Inc. to provide your survey needs for this project. If there are any questions concerning this proposal or if I can be of further assistance, please contact me at (281) 929-9752 at your convenience.

Sincerely,  
**GORRONDONA & ASSOCIATES, INC.**

James M. Ewing, RPLS  
Houston District Manager

Mr. Erik Lopez, EIT  
Freese & Nichols, Inc.  
March 12, 2025

**GORRONDONA & ASSOCIATES, INC.  
HOURLY FEE SCHEDULE 2021**

<b><u>DESCRIPTION OF SERVICE</u></b>	<b><u>HOURLY RATE</u></b>
RPLS - PRINCIPAL	\$ 175.00
RPLS - PROJECT MANAGER	\$ 155.00
RPLS - TASK LEADER	\$ 135.00
SENIOR SURVEY TECHNICIAN	\$ 108.00
SURVEY TECHNICIAN	\$ 98.00
1 – PERSON SURVEY CREW (INCLUDES TOTAL STATION AND GPS VRS UNIT)	\$ 130.00
2 – PERSON SURVEY CREW (INCLUDES TOTAL STATION AND GPS VRS UNIT)	\$ 170.00
3 – PERSON SURVEY CREW (INCLUDES TOTAL STATION AND GPS VRS UNIT)	\$ 190.00
ADMIN/CLERICAL	\$ 65.00
<b><u>DIRECT EXPENSES</u></b>	<b><u>COST</u></b>
Lodging	\$ 98.00/Night
Meals	\$ 50.00/Day
Mileage	\$ 0.585/Mile

Mr. Erik Lopez, EIT  
Freese & Nichols, Inc.  
March 12, 2025

