

CITY OF FULSHEAR

“FIND YOUR FUTURE IN FULSHEAR”

30603 FM 1093 WEST/ PO Box 279 ~ FULSHEAR, TEXAS 77441

PHONE: 281-346-1796 ~ FAX: 281-346-2556

www.FulshearTexas.gov

CITY COUNCIL:

MAYOR: Aaron Groff

MAYOR PRO-TEM: Kaye Kahlich

COUNCIL MEMBER: Kent Pool

COUNCIL MEMBER: Kevin White

COUNCIL MEMBER: Debra Cates

COUNCIL MEMBER: Lisa Martin

COUNCIL MEMBER: Joel
Patterson

COUNCIL MEMBER: John Kelly

STAFF:

CITY MANAGER: Jack Harper

CITY SECRETARY: Kimberly
Kopecky

CITY ATTORNEY: J. Grady Randle

SPECIAL CITY COUNCIL MEETING

January 12, 2021

NOTICE IS HEREBY GIVEN OF A SPECIAL CITY COUNCIL MEETING OF THE CITY OF FULSHEAR TO BE HELD ON **Tuesday, January 12, 2021 AT 5:30 PM** IN IRENE STERN COMMUNITY CENTER, 6920 KATY FULSHEAR ROAD, FULSHEAR, TEXAS FOR CONSIDERING THE FOLLOWING ITEMS. THE CITY COUNCIL RESERVES THE RIGHT TO ADJOURN INTO EXECUTIVE SESSION AT ANY TIME DURING THE COURSE OF THIS MEETING TO DISCUSS ANY MATTERS LISTED ON THE AGENDA, AS AUTHORIZED BY THE TEXAS GOVERNMENT CODE, INCLUDING, BUT NOT LIMITED TO, SECTIONS 551.071 (CONSULTATION WITH ATTORNEY), 551.072 (DELIBERATIONS ABOUT REAL PROPERTY), 551.073 (DELIBERATIONS ABOUT GIFTS AND DONATIONS), 551.074 (PERSONNEL MATTERS), 551.076 (DELIBERATIONS ABOUT SECURITY DEVICES), 551.087 (ECONOMIC DEVELOPMENT), 418.175.183 (DELIBERATIONS ABOUT HOMELAND SECURITY ISSUES) AND AS AUTHORIZED BY THE TEXAS TAX CODE, INCLUDING, BUT NOT LIMITED TO, SECTION 321.3022 (SALES TAX INFORMATION).

Incidental Meeting Notice: A quorum of the City of Fulshear City Council, Planning and Zoning Commission, City of Fulshear Development Corporation (Type A), Fulshear Development Corporation (Type B), Parks and Recreation Commission, Historic Preservation and Museum Commission, Zoning Board of Adjustment, or any or all of these, may be in attendance at the meeting specified in the foregoing notice, which attendance may constitute a meeting of such governmental body or bodies as defined by the Texas Open Meetings Act, Chapter 551, Texas Government Code.

Therefore, in addition to the foregoing notice, notice is hereby given of a meeting of each of the above-named governmental bodies, the date, hour, place, and subject of which is the same as specified in the foregoing notice.

Notice Pertaining to Social Distancing Requirements: In accordance with the Texas Open Meetings Act, Chapter 551, Government Code, this meeting shall be open to the public, except as provided by said Act. However, any members of the public who attend the meeting are individually responsible for complying with any applicable proclamation or order issued by the governor or any local official which may be in effect at the time of the meeting, including but not limited to any restrictions which may require such members of the public to implement social distancing, to minimize social gatherings, or to minimize in-person contact with people who are not in the same household.

I. CALL TO ORDER

II. QUORUM AND ROLL CALL

III. CITIZEN'S COMMENTS

THIS IS AN OPPORTUNITY FOR CITIZENS TO SPEAK TO COUNCIL RELATING TO AGENDA AND NON-AGENDA ITEMS. SPEAKERS ARE ADVISED THAT COMMENTS CANNOT BE RECEIVED ON MATTERS WHICH ARE THE SUBJECT OF A PUBLIC HEARING ONCE THE HEARING HAS BEEN CLOSED. SPEAKERS ARE REQUIRED TO REGISTER IN ADVANCE AND MUST LIMIT THEIR COMMENTS TO THREE (3) MINUTES.

IV. BUSINESS

- A. CONSIDERATION AND POSSIBLE ACTION TO APPROVE A STREET NAME CHANGE FOR WATER PLANT ROAD**
- B. WORKSHOP AND INITIAL DISCUSSION AMONG CITY COUNCIL FOR A COMPREHENSIVE PLAN UPDATE**
- C. CONSIDERATION AND POSSIBLE ACTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR THE WATER AND WASTEWATER MASTER PLAN UPDATE**

V. EXECUTIVE SESSION

- A. EXECUTIVE SESSION - PURSUANT TO SECTION 551.071 OF THE TEXAS OPEN MEETINGS ACT (CHAPTER 551, GOVERNMENT CODE), CONSULT WITH THE ATTORNEY TO THE GOVERNING BODY ON A MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE GOVERNING BODY UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE TEXAS OPEN MEETINGS ACT; PURSUANT TO SECTION 551.072 OF THE TEXAS OPEN MEETINGS ACT, DELIBERATE CONCERNING THE PURCHASE, EXCHANGE, LEASE, OR VALUE OF REAL PROPERTY**
 - RIGHT OF WAY ACQUISITION**

VI. ADJOURNMENT

NOTE: IN COMPLIANCE WITH THE AMERICAN WITH DISABILITIES ACT, THIS FACILITY IS WHEELCHAIR ACCESSIBLE AND ACCESSIBLE PARKING SPACES ARE AVAILABLE. REQUESTS FOR ACCOMMODATIONS OR INTERPRETIVE SERVICE MUST BE MADE AT LEAST 48 BUSINESS HOURS PRIOR TO THIS MEETING. PLEASE CONTACT THE CITY SECRETARY'S OFFICE AT 281-346-1796

FOR FURTHER INFORMATION.

I, KIMBERLY KOPECKY, CITY SECRETARY OF THE CITY, DO HEREBY CERTIFY THAT THE ABOVE NOTICE OF MEETING AND AGENDA FOR THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS WAS POSTED ON THURSDAY, JANUARY 7, 2021 by 5:00 P.M. IN PLACE CONVENIENT AND READILY ACCESSIBLE AT ALL TIMES TO THE GENERAL PUBLIC, IN COMPLIANCE WITH CHAPTER 551, TEXAS GOVERNMENT CODE.

KIMBERLY KOPECKY, CITY SECRETARY

**AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF FULSHEAR, TEXAS**

AGENDA OF: 1/12/2021 **ITEMS:** IV.A.
DATE SUBMITTED: 1/5/2021 **DEPARTMENT:** Building Services
PREPARED BY: ZACH GOODLANDER & SHARON VALIANTE **PRESENTER:** ZACH GOODLANDER & SHARON VALIANTE
SUBJECT: CONSIDERATION AND POSSIBLE ACTION TO APPROVE A STREET NAME CHANGE FOR WATER PLANT ROAD

Expenditure Required:

Amount Budgeted:

Funding Account:

Additional Appropriation Required:

Funding Account:

EXECUTIVE SUMMARY

David Leyendecker served the City of Fulshear as it's City Engineer for over 30 years before his sudden passing in late-December of 2020. In his role there wasn't any water line, road, or other public infrastructure in the Fulshear-Katy area that didn't pass across his desk at some point. Innumerable plan sheets, plats and surveys quietly bear his name. Now, with David's passing, we'd like to honor his legacy in a lasting and louder way by renaming Water Plant Road to honor David Leyendecker.

Possible options could include but are not limited to:

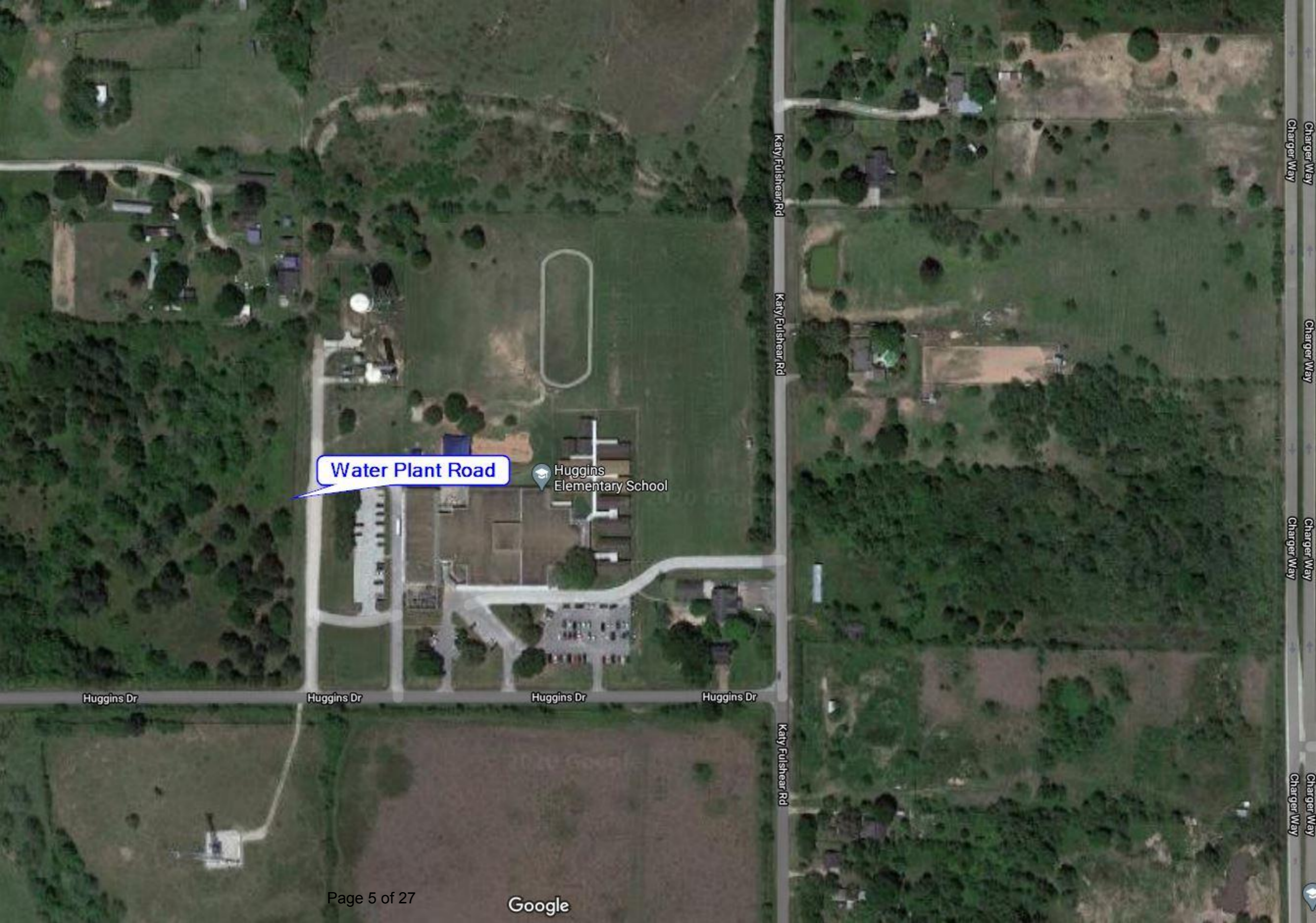
Leyendecker Road
Leyendecker Lane
D. Leyendecker St., etc.

RECOMMENDATION

Staff recommends Council act upon the possible renaming of Water Plant Road to honor David Leyendecker

ATTACHMENTS:

Description	Upload Date	Type
Water Plant Road - Aerial View	1/6/2021	Backup Material
Water Plant Road - Street View	1/6/2021	Backup Material



Water Plant Road

Huggins Elementary School

Huggins Dr

Huggins Dr

Huggins Dr

Huggins Dr

Katy Fulshear Rd

Katy Fulshear Rd

Katy Fulshear Rd

Charger Way

Charger Way

Charger Way

Charger Way



ISSUES AND NEEDS DISCUSSION

Fulshear Comprehensive Plan

As an early step in the process of updating Fulshear’s Comprehensive Plan, prime consultant Kendig Keast Collaborative (KKC) will facilitate a “big picture” workshop discussion with City Council. Typically this workshop would be the first activity in a KKC-assisted plan update. However, as the process has been disrupted since the spring by the COVID-19 public health situation, KKC has already completed some initial background work and interviews across all City departments. Therefore, along with seeking insights and perspective from City Council, KKC personnel will offer their observations to confirm they are building a solid foundation for the work efforts ahead.

WORKSHOP PURPOSES

- Brief Council on the project process and timeline.
- Ensure early input and direction to the project consultants, to help focus their work.
- Highlight the special characteristics and circumstances of Fulshear as context for the plan.

Workshop Considerations

The discussion is intended to be informal, interactive and last no more than one hour. Likely discussion points will include:

Looking Back

- Ways in which Fulshear is the same/different since preparation of the 2014 Comprehensive Plan.
- Major community accomplishments over these recent years.
- Things considered or set out to do but did not accomplish ... why, and are they still on the agenda?

Looking Ahead

- Opportunities and challenges in the following areas:
 - Community growth and demographic trends
 - Land use and development/redevelopment
 - Economic development strategy
 - Public services and capital projects (streets, infrastructure, facilities, etc.)
 - Transportation
 - Recreation and amenities
 - Community image and identity
 - Others

Where to Focus

- Strategic issues involving the physical characteristics of Fulshear that must be addressed—or remain an ongoing focus—in the Comprehensive Plan.
- Your personal hopes/priorities for the community in serving as an elected official.
- The most difficult community issues you have had to deal with in your official roles.

**AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF FULSHEAR, TEXAS**

AGENDA OF: 1/12/2021 **ITEMS:** IV.C.
DATE 11/30/2020 **DEPARTMENT:** Public Works
SUBMITTED:
PREPARED BY: Sharon Valiante, Public Works **PRESENTER:** Sharon Valiante, Public Works
 Director Director
SUBJECT: CONSIDERATION AND POSSIBLE ACTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR THE WATER AND WASTEWATER MASTER PLAN UPDATE

Expenditure Required: \$140,000

Amount Budgeted: \$150,000

Funding Account: 501-000-5892-02; 501-000-5892-07 (\$70,000 each)

Additional Appropriation Required:

Funding Account:

EXECUTIVE SUMMARY

As a component of the FY21 adopted Capital Improvement Program, an update to the City's 2017 adopted Water and Wastewater Master Plan Project was established to re-evaluate the Master Plan, taking into consideration the pace of the growth rate of development and to incorporate recent studies. The evaluation will include the City's current and future water distribution and collection system service areas and will focus on 5-year, 10-year and 20-year planning periods.

Staff worked closely with Freese and Nichols, Inc (FNI) to scope the project. FNI performed and prepared the original Water and Wastewater Master Plan, presented it to City Council. The Master Plan was used to program the 5-year Capital Improvement Plan for budgeting since it was adopted.

There are several project tasks that include stakeholder meetings, a water & wastewater model update and calibration, population projects, water demands and wastewater flow projections, water and wastewater system hydraulics analysis, and water and wastewater capital improvement plans and a Master Plan Report.

The update will provide a guiding document for the future of the City's Water and Wastewater facilities and system development and probable costs associated with the infrastructure needed to implement the Master Plan

The update is projected to be complete within a 240 day period after notice to proceed.

The Purchasing Manager prepared the Agreement with a review by legal.

RECOMMENDATION

Approve a Professional Services Agreement with FNI to provide an update to the City's Water and Wastewater Master Plan, and to authorize the City Manager to execute.

ATTACHMENTS:

Description

Agreement #2021-36

Upload Date

1/5/2021

Type

Exhibit

AGREEMENT
#2021-36
Water and Wastewater Master Plan Update

THIS AGREEMENT (“Agreement”), effective **the date of last signature of this agreement** (“Effective Date”), is entered into by and between the City of Fulshear, Texas (“CITY” or “Client”), a State of Texas political subdivision, with offices located at 30603 FM 1093, Fulshear, Texas 77441, and

Freese and Nichols, Inc.
11200 Broadway, Suite #2320
Pearland, TX 77584
Attn: Richard Weatherly, P.E.
(713) 600-6824
raw@freese.com

hereinafter referred to as “CONTRACTOR”.

ARTICLE I
RETENTION OF THE CONTRACTOR

1.1 The CONTRACTOR is being retained to provide goods and services described below to the CITY based on the CONTRACTOR’s demonstrated competence and requisite qualifications to perform the scope of the work described herein. The CONTRACTOR has special knowledge and expertise that is of interest to the CITY. CITY agrees to and hereby does retain the CONTRACTOR, as an independent CONTRACTOR, and the CONTRACTOR agrees to provide the service to the CITY, in accordance with the terms and conditions provided in this Agreement.

ARTICLE II
SCOPE OF SERVICES

2.1 The CONTRACTOR will provide the goods and services described in the attached Appendix A (collectively, “Services”) which is hereby incorporated by this reference and made a part of this Agreement, and shall be subject to the terms and conditions in this Agreement. In the event of a conflict between any term or provision in this Agreement and any term or provision in Appendix A, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such Appendix A.

2.1 Any agreed-upon changes to Appendix A shall be set forth in an Amendment to this Agreement. CONTRACTOR will not implement any changes or any new services until an Amended Agreement has been duly executed by the CITY. CITY shall not be liable for any amounts not included in a duly executed Appendix A or Amended Appendix A.

2.2 All Services rendered under this Agreement will be performed by the CONTRACTOR: i) with due care; ii) in accordance with generally prevailing industry standards; and iii) in compliance with all applicable laws, government regulatory requirements.

**ARTICLE III
TERM**

- 3.1 **Term.** This Agreement will commence on the effective date and shall remain in effect until completion of the Services, in accordance with the schedule in Appendix A, unless earlier terminated as provided herein.
- 3.2 **Termination.** Either Party may terminate this Agreement or Appendix A at any time, with or without cause, upon thirty (30) days' prior written notice. Upon its receipt of notice of termination of this Agreement or Appendix A, CONTRACTOR shall follow any instructions of CITY respecting work stoppage. CONTRACTOR shall cooperate with CITY and CITY's designees to provide for an orderly conclusion of the Services. CONTRACTOR shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to CITY, or CITY's designee, at its request. If CITY elects to continue any activities underlying a terminated Agreement after termination, CONTRACTOR shall cooperate with CITY to provide for an orderly transfer of CONTRACTOR's responsibilities with respect to such Agreement to CITY or its designee. Upon the effective date of any such termination, the CONTRACTOR shall submit a final invoice for payment in accordance with Article IV, and CITY shall pay such amounts as are due to CONTRACTOR through the effective date of termination. CITY shall only be liable for payment of services rendered before the effective date of termination. If Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.

**ARTICLE IV
COMPENSATION**

- 4.1 **Fees.** In consideration for the Services rendered by CONTRACTOR to CITY under this Agreement, and for each duly executed Appendix A, CITY will pay CONTRACTOR the **fees as stated in Appendix A**. The total fees paid under this agreement shall not exceed **\$140,000.00**.
- 4.2 **Invoices.** CONTRACTOR shall submit an invoice every month, or as otherwise stated in a Appendix A, for Services provided. CITY shall pay undisputed amounts in such invoice within thirty (30) days of receipt. Invoices should be submitted to:

City of Fulshear
Attn: Accounting
PO Box 279
Fulshear, TX 77441
(281) 346-1796
Email: accounting@fulsheartexas.gov

Costs incurred prior to execution of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever to pay for performance of this Agreement from the monies of the CITY, other than from the monies designated for this Agreement.

The City will only pay for services rendered and shall not pre-pay for work that has not been performed.

If CITY disputes any invoice CITY shall timely pay the undisputed portion and promptly notify CONTRACTOR in writing of the nature of the dispute as to the remainder, and the parties will use their best efforts to resolve the dispute expeditiously. In the event the dispute is not resolved within thirty (30) days after receipt by CONTRACTOR of the notice of such dispute, CONTRACTOR may suspend performance of the Services, without limitation or waiver of any other right or remedy available under this Agreement or at law.

**ARTICLE V
RELATIONSHIP BETWEEN THE PARTIES**

5.1 **Independent Contractor.** It is understood and agreed that the relationship described in this Agreement between the Parties is contractual in nature and is not to be construed to create a partnership or joint venture or agency relationship between the parties. Neither party shall have the right to act on behalf of the other except as expressly set forth in this Agreement. CONTRACTOR will be solely responsible for and will pay all taxes related to the receipt of payments hereunder. No CONTRACTOR personnel shall obtain the status of or otherwise be considered a CITY employee by virtue of their activities under this Agreement. For the avoidance of doubt, in no event will CITY pay, reimburse, or otherwise be responsible, financially or otherwise, for any insurance, health care, or similar costs or benefits relating to CONTRACTOR, its affiliates, or any of their employees, subcontractors, or agents. The rights and obligations of CITY under this Agreement may be exercised or performed on its behalf by one or more of its affiliates.

**ARTICLE VI
REPRESENTATION AND WARRANTIES**

6.1 **Representations and Warranties.** CONTRACTOR represents and warrants that:

6.1.1 As of the Effective Date of this Agreement, it is not a party to any oral or written contract or understanding with any third party that is inconsistent with this Agreement or would affect the CONTRACTOR's performance under this Agreement or that will in any way limit or conflict with its ability to fulfill the terms of this Agreement. The CONTRACTOR further represents that it will not enter into any such agreement during the Term of this Agreement;

6.1.2 CONTRACTOR will provide to CITY, with each deliverable to be provided under this Agreement, a written summary sheet listing any third party software or other intellectual property contained within the deliverable, if any, together with licenses permitting CITY to use such third-party software and intellectual property in connection with its use of the deliverable and the terms, conditions, and status of the license of such software and intellectual property. Except for the third-party software and intellectual property described in the written summary provided to CITY in connection with the preceding sentence, the CONTRACTOR warrants and represents that all work product created under this Agreement shall be original work of the CONTRACTOR or in the public domain and shall not infringe any copyright, trademark, trade secret, patent or other Intellectual Property right of any third party;

6.1.3 CONTRACTOR and its employees and subcontractors have all of the necessary qualifications, licenses, permits, and registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and registrations shall be current and in good standing; and

6.1.4 CONTRACTOR shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the CONTRACTOR's obligations under this Agreement.

**ARTICLE VII
CONFIDENTIAL INFORMATION AND OWNERSHIP**

7.1 **Confidential Information.** CONTRACTOR acknowledges that any information it or its employees, agents, or subcontractors obtain regarding the operation of CITY, its products, services, data, policies, customers, personnel, and other aspect of its operation ("Confidential Information") is proprietary and confidential, and shall not be revealed, sold, exchanged, traded, or disclosed to any person, company, or other entity during the period of the

CONTRACTOR's retention hereunder or at any time thereafter without the express written permission of CITY. CONTRACTOR shall use commercially reasonable means to secure CITY's Confidential Information.

Notwithstanding anything in this Agreement to the contrary, CONTRACTOR shall have no obligation of confidentiality with respect to information that (i) is or becomes part of the public domain through no act or omission of CONTRACTOR; (ii) was in CONTRACTOR's lawful possession prior to the disclosure and had not been obtained by CONTRACTOR either directly or indirectly from the CITY; (iii) is lawfully disclosed to CONTRACTOR by a third party without restriction on disclosure; (iv) is independently developed by CONTRACTOR without use of or reference to the CITY's Confidential Information; or (v) is required to be disclosed by law or judicial, arbitral or governmental order or process, provided CONTRACTOR gives the CITY prompt written notice of such requirement to permit the CITY to seek a protective order or other appropriate relief. CONTRACTOR acknowledges that CITY must strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information. This obligation supersedes any conflicting provisions of this Agreement. In the event a request for public information is made, a determination on whether information is confidential or proprietary will be made by the Office of the Attorney General of the State of Texas.

- 7.2 **Ownership.** All final documents, reports, information, or materials are and shall at all times be and remain, upon payment of CONTRACTOR's invoices, the property of CITY and shall not be subject to any restriction or limitation on their future use by, or on behalf of, CITY, except otherwise provided herein.
- 7.3 **Texas Government Code 552, Subchapter J:** Effective January 1, 2020, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the CONTRACTOR agrees that this Agreement can be terminated if the CONTRACTOR knowingly or intentionally fails to comply with a requirement of that subchapter.

ARTICLE VIII GENERAL PROVISIONS

- 8.1 **Notices.** All notices from one Party to another Party regarding this Agreement shall be in writing and delivered to the addresses shown below:

If to CITY:

City of Fulshear
Attn: Purchasing Office
PO Box 279
Fulshear, TX 77441
(281) 346-8812
coberrender@fulsheartexas.gov

If to CONTRACTOR:

Freese and Nichols, Inc.
11200 Broadway, Suite #2320
Pearland, TX 77584
Attn: Richard Weatherly, P.E.
(713) 600-6824
raw@freese.com

The above contact information may be modified without requiring an amendment to the Agreement, provided that written notification of such modification is provided to the other party no less than ten (10) days before such modification is to become effective.

8.2 **Limitation of Liability.** In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damages or expenses arising out of or relating to this Agreement, whether arising from a breach of contract or warranty, or arising in tort, strict liability, by statute or otherwise, even if it has been advised of their possible existence or if such loss, damages or expenses were reasonably foreseeable.

Notwithstanding any provision hereof to the contrary, neither party's liability shall be limited by this Article with respect to claims arising from breach of any confidentiality obligation, arising from such party's infringement of the other party's intellectual property rights, covered by any express indemnity obligation of such party hereunder, arising from or with respect to injuries to persons or damages to tangible property, or arising out of the gross negligence or willful misconduct of the party or its employees.

8.3 **Conflict of Interest.** During the term of this Agreement, and all extensions hereto and for a period of one (1) year thereafter, neither party, shall, without the prior written consent of the other, directly or indirectly, whether for its own account or with any other persons or entity whatsoever, employ, solicit to employ or endeavor to entice away any person who is employed by the other party.

8.4 **Force Majeure.** In the event that either party hereto is prevented from or delayed in the performance of any of its obligations hereunder by reason of force majeure, defined as acts of God, war, riots, storms, fires or any other cause whatsoever beyond the reasonable control of the party, the party so prevented or delayed shall be excused from the performance of any such obligation to the extent and during the period of such prevention or delay. The period of time applicable to such requirement shall be extended for a period of time equal to the period of time such Party was delayed. Each Party must inform the other in writing within reasonable time of the existence of such force majeure.

8.5 **Ability to Perform.** CONTRACTOR agrees promptly to inform CITY of any event or change in circumstances which may reasonably be expected to negatively affect the CONTRACTOR's ability to perform its obligations under this Agreement in the manner contemplated by the parties.

8.6 **No Indemnification by City.** The Parties expressly acknowledge that the City's authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification by the City is invalid. Nothing in this Agreement requires that the City incur debt, assess or collect funds, or create a sinking fund.

8.7 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, United States of America. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be in Fort Bend County, Texas.

8.8 **Waiver.** Failure by either party to insist on strict adherence to any one or more of the terms or conditions of this Agreement, or on one or more occasions, will not be construed as a waiver, nor deprive that party of the right to require strict compliance with the same thereafter.

8.9 **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes all other agreements, discussions, representations or understandings between the parties with respect to the subject matter hereof. No amendments hereto, or waivers or releases of obligations hereunder, shall be effective unless agreed to in writing by the parties hereto.

8.10 **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.

8.11 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intents of the Parties.

- 8.12 **Amendments.** This Agreement may be amended only by a written amendment executed by both Parties, except that any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in Federal and State law or regulations or required by the funding source, are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.
- 8.13 **Dispute Resolution.** The parties to this Agreement agree to the extent possible and not in contravention of any applicable State or Federal law or procedure established for dispute resolution, to attempt to resolve any dispute between them regarding this Agreement informally through voluntary mediation, arbitration or any other local dispute mediation process before resorting to litigation.
- 8.14 **Funding.** The Parties understand and acknowledge that the funding of this Agreement is contained in the City’s annual budget and is subject to the approval of the City in each fiscal year. The Parties further agree that should the governing body of the City fail to approve a budget that includes sufficient funds for the continuation of this Agreement, or should the governing body of the City fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall automatically terminate as to the City and the City shall then have no further obligation to the other Party. When the funds budgeted or certified during any fiscal year by the City to discharge its obligations under this Agreement are expended, the other Party’s *sole and exclusive remedy* shall be to terminate this Agreement.
- 8.15 **Public Information.** This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with Texas Government Code Chapter 552, as amended (the “Texas Public Information Act”), such provision shall be void and have no force or effect.

**ARTICLE IX
ADDITIONAL REQUIREMENTS**

- 9.1 **Equal Employment Opportunity.** CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, or national origin. CONTRACTOR shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 9.2 **Insurance.** For the entire term of the Agreement (“Term”), CONTRACTOR shall maintain Comprehensive General Liability insurance coverage of \$1,000,000 per occurrence, \$2,000,000 in the aggregate or medical malpractice insurance (whichever applies)., CONTRACTOR shall also maintain the following insurance: (i) Worker’s Compensation coverage with statutory limits for the State of Texas, including Employers Liability coverage of \$500,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iii) for engineers and architects only: Professional Liability coverage of \$1,000,000 per occurrence; and (iv) for builders only: Builder’s Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name CITY as Additional Insured. CONTRACTOR shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. CONTRACTOR shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work. The CONTRACTOR shall notify the CITY in the event of any change in the required coverage or cancellation, and shall give such notices not less than 30 days prior to the change or cancellation. The CONTRACTOR shall provide a replacement Certificate of Insurance prior to such change or cancellation. The CONTRACTOR agrees to waive all the CONTRACTOR’s, its officers, employees, agents, assigns, and successors’ rights of subrogation, except under the Professional Liability, against the CITY, its officers, employees, and elected representatives for injuries, including

death, property damage, or other loss covered by insurance and the CONTRACTOR will provide a waiver of subrogation endorsement against the CITY. The CITY must be named or listed on the endorsement. **COVERAGES SHALL BE WITH A COMPANY (WITH AT LEAST AN A- BEST RATING) ACCEPTABLE TO THE CITY PURCHASING AND RISK MANAGEMENT DIVISION AND A COPY OF THE CERTIFICATE OF COVERAGE SHALL BE DELIVERED TO THE CITY ON OR BEFORE THE DATE OF THIS AGREEMENT.**

9.2 House Bill 89 Certification

Conditioned upon its requirements, the undersigned certifies that the Company named above, under the provisions of Subtitle F, title 10, Government Code Chapter 2271:

Does not boycott Israel currently; and
Will not boycott Israel during the term of the contract.

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

Freese and Nichols, Inc.

City of Fulshear

Richard Weatherly 11/10/20
Signature Date

Signature Date

Richard Weatherly, PE
Printed Name

Jack Harper
Printed Name

Vice President
Title

City Manager
Title

APPENDIX A

SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT

PROJECT UNDERSTANDING

Freese and Nichols, Inc. (FNI) will conduct a Water and Wastewater Master Plan Update (Project) for the City of Fulshear (City). The project will include updating the City's current master plan and incorporate recent studies to develop a guiding document for the future of water and wastewater in Fulshear. The evaluation will include the City's current and future water distribution and wastewater collection system service areas. Five-year (2025), 10-year (2030), and 20-year (2040) planning periods will be included. The project tasks are broken down in the following **Table 1**:

Table 1: Water and Wastewater Master Plan Update Tasks

Task	Task Description
Basic Services	
A	KICKOFF MEETING AND INITIAL DATA COLLECTION
B	STAKEHOLDER COORDINATION MEETINGS
C	WATER AND WASTEWATER SYSTEM MAPPING UPDATE AND FIELD PRESSURE TESTING
D	WATER MODEL UPDATE AND CALIBRATION
E	WASTEWATER MODEL UPDATE AND VALIDATION
F	POPULATION PROJECTIONS, WATER DEMANDS AND WASTEWATER FLOW PROJECTIONS
G	WATER AND WASTEWATER SYSTEM HYDRAULIC ANALYSES
H	WATER AND WASTEWATER CAPITAL IMPROVEMENT PLANS AND MASTER PLAN REPORT

ARTICLE I

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

TASK A: KICKOFF MEETING AND INITIAL DATA COLLECTION

A1. Project Kickoff Meeting

FNI will meet with the City of Fulshear (City) staff to review scope and schedule of the project and critical project milestones. FNI will provide and review a data request memorandum outlining data needed for the water and wastewater master plan update.

A2. Data Collection and Review

FNI will coordinate with City staff on obtaining data required for the master plan update, including information on water and wastewater projects currently under design and construction, updated land use assumptions and population and developments information, any update to GIS files, facility information, historical water production data, current facility operational data, and information on water meters and billing, etc.

TASK B: STAKEHOLDER COORDINATION MEETINGS

B1. Stakeholder Coordination Meetings

FNI will prepare for and attend stakeholder coordination meetings to discuss future development plans, water demand and wastewater flow projections and infrastructure needs.

- Up to two (2) coordination meetings with Developers
- Up to two (2) coordination meetings with North Fort Bend Water Authority
- Up to two (2) coordination meetings with other City consultants

TASK C: WATER AND WASTEWATER SYSTEM MAPPING UPDATE AND FIELD PRESSURE TESTING

C1. Update Water and Wastewater System Mapping

FNI will update mapping for the City's water distribution system and wastewater collection system to show recent improvements. Major asset and facility information will be shown on large color exhibits.

C2. Conduct Water System Field Testing

FNI will perform water system pressure testing that will consist of utilizing up to six (6) FNI-furnished digital pressure recorders for a one-week duration. City operations staff will install the pressure recorders on the fire hydrants. The City will provide any available operational data for the duration of the testing time period.

TASK D: WATER MODEL UPDATE AND CALIBRATION

D1. Update Water Distribution System Hydraulic Model

FNI will update the City's hydraulic water model utilizing available data from City's most recent GIS, CAD files, as-built drawings, construction plans, and operations data. This will be an extended period simulation (EPS) water model and will consist of all 6-inch and larger pipelines, pumping, water plants, and storage facilities.

D2. Allocate Existing Water Demands

FNI will utilize monthly meter billing data provided by the City to allocate existing demands throughout the service area. FNI will spatially locate water meter locations for active accounts in GIS so the demands can be allocated to the appropriate model nodes.

D3. Conduct Water Model Calibration

FNI will conduct an extended period simulation (EPS) water model calibration by comparing model output to recorded values for pressures and any other available operational data. Comparison graphs and mapping will be provided to document model calibration results.

TASK E: WASTEWATER MODEL UPDATE AND VALIDATION

E1. Update Wastewater Collection System Hydraulic Model

FNI will update the City's hydraulic wastewater model utilizing available data from City's most recent GIS, CAD files, as-built drawings, construction plans, and operations data. This will be a steady state wastewater model and will consist of all 6-inch and larger gravity lines, associated lift stations and force mains, and wastewater treatment plant location.

E2. Allocate Existing Wastewater Loads

FNI will utilize monthly meter billing data and historical wastewater effluent data to allocate existing

wastewater loads throughout the service area.

E3. Conduct Wastewater Model Validation

FNI will conduct a wastewater model validation by verifying flow direction, pipeline profiles and slopes, and overall system flow data.

E4. Progress Meeting No. 1 – Review Water and Wastewater Model Development

FNI will meet with the City to discuss the results of the wastewater model development and validation. City comments will be solicited and addressed.

TASK F: POPULATION PROJECTIONS, WATER DEMANDS AND WASTEWATER FLOW PROJECTIONS

F1. Population and Non-residential Growth Projections

FNI will develop and distribute population and non-residential growth projections by planning area for 5-year, 10-year, and 20-year conditions. This process will include discussions with City staff and developers, review of development agreements, and information from available sources including Population and Survey Analysts (PASA) demography report. Water and wastewater service areas for each planning period will be reviewed and updated.

F2. Review Historical Water Demands and Wastewater Flows

FNI will evaluate historical water production and wastewater flow data from the City to develop trends. This data will be considered when selecting water and wastewater planning criteria for demand and flow projections.

F3. Develop and Distribute Water Demand and Wastewater Flow Projections

FNI will analyze historical demands, flows, and meter billing information and develop per-capita residential and non-residential planning criteria for projected water demands and wastewater flows. Projected water demands and wastewater flows will be developed for existing, 5-year, 10-year, and 20-year planning periods.

- Water demand projections will include average day, maximum day, and peak hour demands
- Wastewater flow projections will include annual average day and peak wet weather flows

F4. Progress Meeting No. 2 – Review Population, Water Demand, and Wastewater Flow Projections

FNI will meet with the City to discuss land use assumptions and projected population, water demands, and wastewater flows. FNI will address comments from City staff and make revisions as necessary.

TASK G: WATER AND WASTEWATER SYSTEM HYDRAULIC ANALYSES

G1. Conduct Existing and Future Water System Analyses

FNI will conduct the following analyses for the existing, 5-year, 10-year, and 20-year planning periods: TCEQ Capacity Requirements – FNI will evaluate the water distribution system for compliance with the TCEQ Chapter 290 water system capacity requirements. FNI will analyze supply (well production) capacity, pumping capacity, elevated storage capacity, and total storage capacity to determine if any deficiencies exist.

Water System Modeling – FNI will conduct hydraulic modeling for existing, 5-year, 10-year, and 20-year conditions. Water system modeling will consist of average day, maximum day, peak hour, and fire flow demand conditions. FNI will prepare illustrations that document system operations and mapping that documents system pressures.

Fire Flow Analyses – FNI will utilize the calibrated hydraulic water model to conduct fire flow analysis under existing and future maximum day demands to identify areas with less than adequate fire flow capacity. FNI will prepare mapping of available fire flows.

G2. Water Facility Siting Evaluation

FNI will conduct a siting evaluation to determine optimal location for the future water plant and/or a storage tank. Evaluation will consider land availability, permitting requirements, distribution system compatibility, public perception, and other factors. FNI will develop a technical memorandum summarizing the analysis and recommendation based on the findings of the evaluation.

G3. Conduct Existing and Future Wastewater System Analyses

TCEQ Capacity Evaluation – FNI will conduct an evaluation of the wastewater treatment plant capacities and current and projected wastewater flows to identify any capacity deficiencies and required future improvements for compliance with the TCEQ Chapter 305 75/90 rule.

Existing System Analyses – The validated model will be run to identify existing system deficiencies, surcharging, and other capacity/restriction issues. Mapping will be prepared showing the location and magnitude of all modeled surcharging and overflows.

Future System Analyses – FNI will develop scenarios for the 5-year, 10-year, and 20-year planning periods. Projected residential and non-residential wastewater flows will be distributed in the hydraulic model. Each scenario will be evaluated under peak wet weather conditions to determine the system response and necessary peak flow conveyance.

G4. Progress Meeting No. 3 – Review Existing and Future Water and Wastewater System Analyses

FNI will meet with the City to present and discuss results of the water and wastewater system analyses. Mapping will be prepared showing the results of the system analyses.

TASK H: WATER AND WASTEWATER CAPITAL IMPROVEMENT PLANS AND MASTER PLAN REPORT

H1. Develop Distribution System Improvements for Each Planning Period

FNI will utilize the results of the existing and future model scenario analyses to develop improvements of water system transmission, elevated and ground storage, and pumping facilities needed to serve 20-year demands using the model analyses under average day, maximum day and peak hour demand conditions. Additionally, FNI will utilize model results to develop improvements and review future improvement projects identified in prior studies to serve areas that are currently not developed. FNI will produce mapping showing recommended improvements for the 5-year, 10-year, and 20-year planning periods as well as improvements needed to correct existing system deficiencies.

H2. Develop Collection System Improvements for Each Planning Period

FNI will utilize the results of the existing and future model scenario analyses to develop improvements to eliminate excessive surcharging and overflows in the collection system. Additionally, FNI will utilize model results to develop improvements and review future improvement projects identified in prior studies to serve areas that are currently not developed. FNI will produce mapping showing recommended improvements for the 5-year, 10-year, and 20-year planning periods as well as improvements needed to correct existing system deficiencies.

H3. Develop Draft Water and Wastewater Capital Improvement Plans (CIPs)

FNI will develop draft water and wastewater capital improvement plans (CIPs) consisting of project descriptions, prioritization, justification, phasing, and costs for each proposed project in year 2020 dollars including engineering and contingencies. Large scale citywide maps will be produced showing

proposed project locations.

H4. Progress Meeting No. 4 – Review Draft Water and Wastewater CIPs

FNI will meet with the City to discuss the draft wastewater CIP development. FNI will solicit comments from the City and update the capital improvement plans accordingly.

H5. Prepare Draft Water and Wastewater Master Plan Report

FNI will prepare a Draft Water and Wastewater Master Plan Report documenting population and demand/flow projections, hydraulic model development and analyses, system evaluation, and CIP improvement recommendations. An electronic PDF version of the report will be submitted to the City for review.

H6. Progress Meeting No. 5 – Review Draft Water and Wastewater Master Plan Report

FNI will meet with the City to discuss the Draft Master Plan Report. FNI will solicit comments for inclusion into the Final Report.

H7. City Council Presentation

FNI will prepare and conduct one (1) presentation on the results of the master plan and present to City Council.

H8. Finalize Master Plan Report

FNI will incorporate City comments and submit an electronic PDF Copy and five (5) hard copies of the Final Wastewater Master Plan Report.

Summary of Meetings

- Project Kickoff Meeting
- Progress Meeting No. 1 – Review Water and Wastewater Model Development
- Progress Meeting No. 2 – Review Population, Water Demand, and Wastewater Flow Projections
- Progress Meeting No. 3 – Review Existing and Future Water and Wastewater System Analyses
- Progress Meeting No. 4 – Review Draft Water and Wastewater CIPs
- Progress Meeting No. 5 – Review Draft Water and Wastewater Master Plan Report
- Additional Meetings
 - Up to two (2) coordination meetings with Developers
 - Up to two (2) coordination meetings with North Fort Bend Water Authority
 - Up to two (2) coordination meetings with other City consultants

Summary of Council Presentations

- Presentation to City Council on Water and Wastewater Master Plan

Summary of Deliverables

- Technical Memorandum No. 1 – Water Facility Siting Evaluation
- Draft Water and Wastewater Master Plan Report
- Final Water and Wastewater Master Plan Report

ARTICLE II

SPECIAL SERVICES: FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project: **N/A**

ARTICLE III

ADDITIONAL SERVICES: The following Additional Services are not included in the above Basic Services and will not be performed unless authorized by the City.

STRATEGIC PLANNING

FNI will provide strategic planning services to assist the City with evaluating the best implementation and funding alternatives for the development of the City's future water and wastewater system. The City will identify an internal Strategic Planning Committee (SPC) with which this effort will coordinate. The services could include the following:

1. Initial coordination meeting with SPC to identify key challenges and issues of interest
2. Meeting with SPC to review current policy and benchmark data related to water and wastewater issues and challenges
3. Meeting with SPC to discuss findings and recommendations from the Water and Wastewater Master Plan Update
4. Presentation to SPC on potential project funding alternatives

ARTICLE IV

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services as follows:

- Draft Water and Wastewater Master Plan Report – 240 days after NTP
- Final Master Plan Report – 15 days after receiving City Comments on Draft Report

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

ARTICLE V

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

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

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

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and Client designate the following representatives:

Client's Designated Representative – **[Name and contact information]**

Client's Accounting Representative – **[Name and contact information]**

FNI's Designated Representative – **Richard Weatherly, PE
11200 Broadway St., Suite 2320
Pearland, TX 77584
713-600-6824
raw@freese.com**

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