

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT FOR
PROFESSIONAL CONSULTING SERVICES RELATED TO
BRUSHY CREEK AQUATIC LIFE MONITORING
WITH
FREESE AND NICHOLS, INC.**

THE STATE OF TEXAS

§

THE CITY OF ROUND ROCK

§

KNOW ALL BY THESE PRESENTS

§

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

§

THIS AGREEMENT for professional consulting services related to the Brushy Creek Aquatic Life Monitoring Project (the "Agreement"), is made by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation with offices located at 221 East Main Street, Round Rock, Texas 78664-5299 (the "City"), and FREESE AND NICHOLS, INC., located at 10431 Morado Circle, Building 5 Suite 300, Austin, Texas 78759 (the "Consultant").

RECITALS:

WHEREAS, professional services related to the Brushy Creek Aquatic Life Monitoring Project (the "Project") are desired by the City; and

WHEREAS, City has determined that there is a need for the delineated services; and

WHEREAS, City desires to contract with Consultant for these services; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties and obligations hereunder.

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.0 EFFECTIVE DATE, DURATION, AND TERM

A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated as provided herein.

B. The term of this Agreement shall commence upon execution and terminate upon successful completion of the services. The Project is estimated to be completed no later than January 31, 2029.

C. City and the Consultant reserve the right to review the Agreement at any time and may elect to terminate the Agreement with or without cause or may elect to continue.

2.0 CITY SERVICES

City agrees to provide the services to Consultant as described in Exhibit “A” titled “City Services,” incorporated herein by reference for all purposes.

3.0 SCOPE OF SERVICES

Consultant has issued its proposal for services, such proposal for services being attached to this Agreement as Exhibit “B” titled “Scope of Services,” which shall be referred to as the Scope of Services of this Agreement and incorporated herein by reference for all purposes.

Consultant shall satisfactorily provide all services described herein and as set forth in Exhibit “B” pursuant to the schedule set forth in Exhibit “C,” attached hereto and incorporated herein by reference. Consultant shall perform services in accordance with this Agreement, in accordance with the appended Scope of Services and in accordance with due care and prevailing consulting industry standards for comparable services.

4.0 LIMITATION TO SCOPE OF SERVICES

Consultant’s undertaking shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant and City agree that the Scope of Services to be performed is enumerated in Exhibit “B,” and may only be modified by a written Supplemental Agreement executed by both parties as described in Section 10.0.

5.0 CONTRACT AMOUNT

In consideration for the professional consulting services to be performed by Consultant, City agrees to pay Consultant an amount not-to-exceed **One Hundred Fifty-Nine Thousand Nine Hundred Sixty and No/100 Dollars (\$159,960.00)** as set forth in Exhibit “D” titled “Fee Schedule,” incorporated herein by reference for all purposes.

6.0 INVOICE REQUIREMENTS; TERMS OF PAYMENT

Invoices: To receive payment, Consultant shall prepare and submit detailed invoices to the City, in accordance with the delineation contained herein, for services rendered. Such invoices for professional services shall track the referenced Scope of Work, and shall detail the services performed, along with documentation for each service performed. Payment to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by the City. Such invoices shall conform to the schedule of services and costs in connection therewith.

Should additional backup material be requested by the City relative to service deliverables, Consultant shall comply promptly. In this regard, should the City determine it necessary, Consultant shall make all records and books relating to this Agreement available to the City for inspection and auditing purposes.

Payment of Invoices: The City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of an invoice, the City shall endeavor to pay Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described in Section 8.01 herein. Under no circumstances shall Consultant be entitled to receive interest on payments which are late because of a good faith dispute between Consultant and the City or because of amounts which the City has a right to withhold under this Agreement or state law. The City shall be responsible for any sales, gross receipts or similar taxes applicable to the services, but not for taxes based upon Consultant's net income.

7.0 INSURANCE

Consultant shall meet all City of Round Rock Insurance Requirements set forth at: https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf

8.0 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by the City to Consultant will be made within thirty (30) days of the date the performance of the services under this Agreement are completed, or the date the City receives a correct invoice for the services, whichever is later. Consultant may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by the City in the event:

- (a) There is a bona fide dispute between the City and Consultant, a contractor, subcontractor, or supplier about the service performed that cause the payment to be late; or
- (b) There is a bona fide dispute between Consultant and a subcontractor or between a subcontractor and its supplier about the service performed that causes the payment to be late; or
- (c) The terms of a federal contract, grant, regulation, or statute prevent the City from making a timely payment with federal funds; or
- (d) The invoice is not mailed to the City in strict accordance with any instruction on the purchase order relating to the payment.

9.0 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to purchase the services as determined by the City's budget for the fiscal year in question. The City may affect such termination by giving Consultant a written notice of termination at the end of its then-current fiscal year.

10.0 SUPPLEMENTAL AGREEMENT

The terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or by the City Manager, if the City determines that there has been a significant change in (1) the scope, complexity, or character of the services to be performed; or (2) the duration of the work. Any such Supplemental Agreement must be executed by both parties within the period specified as the term of this Agreement. Consultant shall not perform any work or incur any additional costs prior to the execution, by both parties, of such Supplemental Agreement. Consultant shall make no claim for extra work done or materials furnished unless and until there is full execution of any Supplemental Agreement, and the City shall not be responsible for actions by Consultant nor for any costs incurred by Consultant relating to additional work not directly authorized by Supplemental Agreement.

11.0 TERMINATION; DEFAULT

Termination: It is agreed and understood by Consultant that the City or Consultant may terminate this Agreement for the convenience of the City or Consultant, upon thirty (30) days' written notice to Consultant or City, with the understanding that immediately upon receipt of said notice all work being performed under this Agreement shall cease. Consultant shall invoice the City for work satisfactorily completed and shall be compensated in accordance with the terms hereof for work accomplished prior to the receipt of said notice of termination. Consultant shall not be entitled to any lost or anticipated profits for work terminated under this Agreement. Unless otherwise specified in this Agreement, all data, information, and work product related to this Project shall become the property of the City upon termination of this Agreement, and shall be promptly delivered to the City in a reasonably organized form without restriction on future use. Should the City subsequently contract with a new consultant for continuation of service on the Project, Consultant shall cooperate in providing information.

Termination of this Agreement shall extinguish all rights, duties, and obligations of the terminating party and the terminated party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory or which is not performed in compliance with the terms of this Agreement.

Default: Either party may terminate this Agreement, in whole or in part, for default if the Party provides the other Party with written notice of such default and the other fails to satisfactorily cure such default within ten (10) business days of receipt of such notice (or a greater time if agreed upon between the Parties).

If default results in termination of this Agreement, then the City shall give consideration to the actual costs incurred by Consultant in performing the work to the date of default. The cost of the work that is useable to the City, the cost to the City of employing another firm to complete the useable work, and other factors will affect the value to the City of the work performed at the time of default. Neither party shall be entitled to any lost or anticipated profits for work terminated for default hereunder.

The termination of this Agreement for default shall extinguish all rights, duties, and obligations of the terminating Party and the terminated Party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory, or which is not performed in compliance with the terms of this Agreement.

12.0 NON-SOLICITATION

Except as may be otherwise agreed in writing, during the term of this Agreement and for twelve (12) months thereafter, neither the City nor Consultant shall offer employment to or shall employ any person employed then or within the preceding twelve (12) months by the other or any affiliate of the other if such person was involved, directly or indirectly, in the performance of this Agreement. This provision shall not prohibit the hiring of any person who was solicited solely through a newspaper advertisement or other general solicitation.

13.0 INDEPENDENT CONTRACTOR STATUS

Consultant is an independent contractor, and is not the City's employee. Consultant's employees or subcontractors are not the City's employees. This Agreement does not create a partnership, employer-employee, or joint venture relationship. No party has authority to enter into contracts as agent for the other party. Consultant and the City agree to the following rights consistent with an independent contractor relationship:

- (1) Consultant has the right to perform services for others during the term hereof.
- (2) Consultant has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.
- (3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.

- (4) Consultant or its employees or subcontractors shall perform services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.
- (5) Neither Consultant nor its employees or subcontractors shall receive training from the City in skills necessary to perform services required by this Agreement.
- (6) City shall not require Consultant or its employees or subcontractors to devote full time to performing the services required by this Agreement.
- (7) Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

14.0 CONFIDENTIALITY; MATERIALS OWNERSHIP

Any and all programs, data, or other materials furnished by the City for use by Consultant in connection with services to be performed under this Agreement, and any and all data and information gathered by Consultant, shall be held in confidence by Consultant as set forth hereunder. Each party agrees to take reasonable measures to preserve the confidentiality of any proprietary or confidential information relative to this Agreement, and to not make any use thereof other than for the performance of this Agreement, provided that no claim may be made for any failure to protect information that occurs more than three (3) years after the end of this Agreement.

The parties recognize and understand that the City is subject to the Texas Public Information Act and its duties run in accordance therewith.

All data relating specifically to the City's business and any other information which reasonably should be understood to be confidential to City is confidential information of City. Consultant's proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how, and any other information which reasonably should be understood to be confidential to Consultant is confidential information of Consultant. The City's confidential information and Consultant's confidential information is collectively referred to as "Confidential Information." Each party shall use Confidential Information of the other party only in furtherance of the purposes of this Agreement and shall not disclose such Confidential Information to any third party without the other party's prior written consent, which consent shall not be unreasonably withheld. Each party agrees to take reasonable measures to protect the confidentiality of the other party's Confidential Information and to advise their employees of the confidential nature of the Confidential Information and of the prohibitions herein.

Notwithstanding anything to the contrary contained herein, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person or entity (including

governmental agencies) without restriction; (3) is independently developed by the recipient without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party. Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Neither the City nor Consultant will be liable to the other for inadvertent or accidental disclosure of Confidential Information if the disclosure occurs notwithstanding the party's exercise of the same level of protection and care that such party customarily uses in safeguarding its own proprietary and confidential information.

Notwithstanding anything to the contrary in this Agreement, the City will own as its sole property all written materials created, developed, gathered, or originally prepared expressly for the City and delivered to the City under the terms of this Agreement (the "Deliverables"); and Consultant shall own any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, or other similar information which may have been discovered, created, developed or derived by Consultant either prior to or as a result of its provision of services under this Agreement (other than Deliverables). Consultant shall have the right to retain copies of the Deliverables and other items for its archives. Consultant's working papers and Consultant's Confidential Information (as described herein) shall belong exclusively to the Consultant. "Working papers" shall mean those documents prepared by Consultant during the course of performing the Project including, without limitation, schedules, analyses, transcriptions, memos, designed and developed data visualization dashboards and working notes that serve as the basis for or to substantiate the Project. In addition, Consultant shall retain sole and exclusive ownership of its know-how, concepts, techniques, methodologies, ideas, templates, dashboards, code and tools discovered, created or developed by Consultant during the performance of the Project that are of general application and that are not based on City's Confidential Information hereunder (collectively, "Consultant's Building Blocks"). To the extent any Deliverables incorporate Consultant's Building Blocks, Consultant gives City a non-exclusive, non-transferable, royalty-free right to use such Building Blocks solely in connection with the deliverables. Subject to the confidentiality restrictions mentioned above, Consultant may use the deliverables and the Building Blocks for any purpose. Except to the extent required

by law or court order, City will not otherwise use, or sublicense or grant any other party any rights to use, copy or otherwise exploit or create derivative works from Consultant's Building Blocks.

City shall have a non-exclusive, non-transferable license to use Consultant's Confidential Information for City's own internal use and only for the purposes for which they are delivered to the extent that they form part of the Deliverables.

15.0 WARRANTIES

Consultant represents that all services performed hereunder shall be performed consistent with generally prevailing professional or industrial standards, and shall be performed in a professional and workmanlike manner. Consultant shall re-perform any work not in compliance with this representation.

16.0 LIMITATION OF LIABILITY

Should any of Consultant's services not conform to the requirements of the City or of this Agreement, then and in that event the City shall give written notification to Consultant; thereafter, (a) Consultant shall either promptly re-perform such services to the City's satisfaction at no additional charge, or (b) if such deficient services cannot be cured within the cure period set forth herein, then this Agreement may be terminated for default.

In no event will Consultant be liable for any loss, damage, cost or expense attributable to negligence, willful misconduct or misrepresentations by the City, its directors, employees or agents.

Neither party's liability, in contract, tort (including negligence) or any other legal or equitable theory, (a) shall exceed the professional fees paid or due to Consultant pursuant to this Agreement or (b) include any indirect, incidental, special, punitive or consequential damages, even if such party has been advised of the possibility of such damages. Such excluded damages include, without limitation, loss of data, loss of profits and loss of savings of revenue.

17.0 INDEMNIFICATION

Consultant shall save and hold harmless City and its officers and employees from all claims and liabilities due to activities of his/her/itself and his/her/its agents or employees, performed under this Agreement, which are caused by or which result from the negligent error, omission, or negligent act of Consultant or of any person employed by Consultant or under Consultant's direction or control.

Consultant shall also save and hold City harmless from any and all expenses, including but not limited to reasonable attorneys' fees which may be incurred by City in litigation or otherwise defending claims or liabilities which may be imposed on City as a result of such negligent activities by Consultant, its agents, or employees.

18.0 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party may assign any rights or delegate any duties under this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld.

19.0 LOCAL, STATE AND FEDERAL TAXES

Consultant shall pay all income taxes, and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. The City will not do the following:

- (1) Withhold FICA from Consultant's payments or make FICA payments on its behalf;
- (2) Make state and/or federal unemployment compensation contributions on Consultant's behalf; or
- (3) Withhold state or federal income tax from any of Consultant's payments.

If requested, the City shall provide Consultant with a certificate from the Texas State Comptroller indicating that the City is a non-profit corporation and not subject to State of Texas Sales and Use Tax.

20.0 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Consultant, its consultants, agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant shall further obtain all permits, licenses, trademarks, or copyrights required in the performance of the services contracted for herein, and same shall belong solely to the City at the expiration of the term of this Agreement.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of a contract. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

C. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has provision in the contract verifying 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 the contract against a firearm entity or firearm trade association.

The signatory executing this Agreement on behalf of Consultant verifies Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

D. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has provision in the contract verifying that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement. The signatory executing this Agreement on behalf of Consultant verifies Consultant does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

21.0 FINANCIAL INTEREST PROHIBITED

Consultant covenants and represents that Consultant, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required hereunder.

22.0 DESIGNATION OF REPRESENTATIVES

The City hereby designates the following representative authorized to act on its behalf with regard to this Agreement:

Grayson Roberts
Project Manager
Utilities and Environmental Services Department
3400 Sunrise Road
Round Rock, Texas 78665
(512) 671-2867
groberts@roundrocktexas.gov

23.0 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- (1) When delivered personally to recipient's address as stated herein; or
- (2) Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Consultant:

Freese and Nichols, Inc.
10431 Morado Circle, Building 5, Suite 300
Austin, Texas 78759

Notice to City:

City Manager, City of Round Rock
221 East Main Street
Round Rock, TX 78664

AND TO:

Stephanie L. Sandre, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and Consultant.

24.0 APPLICABLE LAW AND ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of Texas.

25.0 EXCLUSIVE AGREEMENT

The terms and conditions of this Agreement, including exhibits, constitute the entire agreement between the parties and supersede all previous communications, representations, and agreements, either written or oral, with respect to the subject matter hereof. The parties expressly agree that, in the event of any conflict between the terms of this Agreement and any other writing, this Agreement shall prevail. No modifications of this Agreement will be binding on any of the parties unless acknowledged in writing by the duly authorized governing body or representative for each party.

26.0 DISPUTE RESOLUTION

The City and Consultant hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

27.0 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion of provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion of provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

28.0 STANDARD OF CARE

Consultant represents that it is specially trained, experienced and competent to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Consultant or designated subconsultants, in a manner acceptable to the City and according to generally accepted business practices.

29.0 GRATUITIES AND BRIBES

City, may by written notice to Consultant, cancel this Agreement without incurring any liability to Consultant if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Consultant or its agents or representatives to any City Officer, employee or elected representative with respect to the performance of this Agreement. In addition, Consultant may be subject to penalties stated in Title 8 of the Texas Penal Code.

30.0 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure an anticipatory repudiation of this Agreement.

31.0 MISCELLANEOUS PROVISIONS

Time is of the Essence. Consultant agrees that time is of the essence and that any failure of Consultant to complete the services for each Phase of this Agreement within the agreed Project schedule may constitute a material breach of the Agreement.

Consultant shall be fully responsible for its delays or for failures to use reasonable efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Consultant's failure to perform in these circumstances, City may withhold, to the extent of such damage, Consultant's payments hereunder without a waiver of any of City's additional legal rights or remedies. City shall render decisions pertaining to Consultant's work promptly to avoid unreasonable delays in the orderly progress of Consultant's work.

Force Majeure. Notwithstanding any other provisions hereof to the contrary, no failure, delay or default in performance of any obligation hereunder shall constitute an event of default or breach of this Agreement, only to the extent that such failure to perform, delay or default arises out of causes beyond control and without the fault or negligence of the party otherwise chargeable with failure, delay or default; including but not limited to acts of God, acts of public enemy, civil war, insurrection, riots, fires, floods, explosion, theft, earthquakes, natural disasters or other casualties, strikes or other labor troubles, which in any way restrict the performance under this Agreement by the parties.

Section Numbers. The section numbers and headings contained herein are provided for convenience only and shall have no substantive effect on construction of this Agreement.

Waiver. No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, which taken together shall be considered one original. The City agrees to provide Consultant with one fully executed original.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereafter indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

For City, Attest:

By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney

Freese and Nichols, Inc.

By: Kimberly Buckley
Printed Name: _____ Kimberly Buckley, PG
Title: _____ Principal/Vice President
Date Signed: _____ May 8, 2024

EXHIBIT A

SERVICES TO BE PROVIDED BY THE CITY

This contract consists of providing professional services to conduct an Aquatic Life Use study of Brushy Creek within the City of Round Rock.

The City of Round Rock will provide the following items/information to FNI under this agreement:

PROJECT KICKOFF MEETING

1. **KICKOFF MEETING** – Participate in meeting with FNI to establish goals and expectations for the study. Provide feedback on goals and expectations for all future project work, including site selection, timing, and sampling.
2. **ACTION ITEMS** – Approve project schedule and plan for site selection and reconnaissance.

SITE SELECTION & RECONNAISSANCE

3. **ONE-DAY SITE SELECTION & FIELD RECONNAISSANCE** – Review preliminary proposed monitoring site locations and provide feedback for safety, logistics, and access. Recommend alternate monitoring locations if applicable or preferred.
4. **FIELD SUPPORT** – Provide at least one staff member to accompany FNI to visit and assess potential monitoring locations and facilitate access if needed.

ENVIRONMENTAL STUDIES

1. **ENVIRONMENTAL SAMPLING** – Fish and benthic macroinvertebrate communities, water chemistry, bacteriology, and physical habitat will be sampled in Brushy Creek at two locations, twice a year each of five successive years. City to provide at least 2 staff members to assist with each field sampling event. Will notify FNI if there is a potential conflict that could affect the ability to collect data on a scheduled sample date.
2. **PUBLIC INVOLVEMENT & OUTREACH** – Coordinate with FNI on sampling dates and potential access approvals/notifications from stakeholders.

PROJECT MANAGEMENT & ADMINISTRATION

1. **GENERAL ADMINISTRATION** – Provide timely reviews and decisions to enable FNI to maintain the project schedule.
2. **MEETINGS** – Meet with the FNI PM on an as-needed basis.

EXHIBIT B

SERVICES TO BE PROVIDED BY FNI

This contract consists of providing professional services to conduct an Aquatic Life Use study of Brushy Creek within the City of Round Rock. The aquatic life use study will inform the City of Round Rock about the ecological health of the stream and possible impacts to its health from stormwater runoff, point source discharges of wastewater, and habitat modifications. The study will be performed following the aquatic life monitoring procedures in TCEQ's Surface Water Quality Monitoring Procedures, Volumes 1 and 2 (RG-415, 2012 and RG-415, 2014 including all applicable updates).

BRUSHY CREEK AQUATIC LIFE MONITORING

1. PROJECT KICKOFF MEETING

- a. A project initiation meeting with City staff to confirm their goals and expectations for the use attainability analysis will be held. Understanding the City's goals and expectations will be the foundation for all future work on the project including final sample site selection, timing, and sampling methods.

2. SITE SELECTION & RECONNAISSANCE

- a. FNI biologists and Round Rock staff will conduct a one-day field check of proposed monitoring sites for accessibility, safety, and representativeness of water quality and habitat conditions. Sample site selection will be confirmed after this field reconnaissance is completed.

3. ENVIRONMENTAL STUDIES

- a. Fish and benthic macroinvertebrate communities, water chemistry, bacteriology, and physical habitat will be sampled in Brushy Creek at two locations. Actual sample locations will be based on field reconnaissance that considers possible sources of water quality impacts, accessibility, and safety for sampling personnel. Proposed locations include:
 - i. Brushy Creek at Great Oaks Dr. near the western extent of the Round Rock's extraterritorial jurisdiction and downstream of the confluence of Brushy Creek and South Brushy Creek. This site should help understand water quality conditions in Brushy Creek as it flows into Round Rock. And,
 - ii. Brushy Creek at Joe B. Freeman Park downstream of the west Brushy Creek Regional Wastewater Treatment Plant and upstream of the larger east Brushy Creek Regional Wastewater Treatment Plant. This site is downstream of IH 35, is near the middle of the Round Rock city limits and can help isolate any differences in water quality between the west and east WWTPs.
 - iii. Brushy Creek at Red Bud Ln. at the eastern city limit of Round Rock. This site should help understand the cumulative water quality and habitat conditions occurring in Round Rock which affect the environmental health of Brushy Creek as it leaves Round Rock.
- b. Each site will be sampled twice a year for each of five successive years. The City will be notified two weeks in advance of each sample date.
 - i. One sample event each year will be conducted in the non-critical period of the Index Period. The non-critical period extends from March 15 to June 30, and from October 1 to October 15. This is the period when there is substantial biological activity, including spawning for many fish, and stream flows tend to be higher and temperatures cooler

- than during the peak of the summer.
- ii. One sample event each year will be conducted in the critical period of the Index Period. The critical period extends from July 1 through September 30. This is the period when environmental conditions are generally more stressful with lower stream flows and higher temperatures.
 - c. Samples collected during each sample event will include the following categories. FNI will be responsible for all sample collection and analyses, except for the benthic macroinvertebrate samples that will be analyzed by Jack Davis and the water chemistry samples which will be analyzed by the NELAC-certified Lower Colorado River Authority (LCRA) lab:
 - i. Fish community (seining and electrofishing)
 - ii. Benthic macroinvertebrate community (kicknet) (sample analysis by Jack Davis, benthic macroinvertebrate expert)
 - iii. Physical habitat assessment, including photographs and possibly drone imagery
 - iv. Instantaneous measurements in the field of dissolved oxygen, temperature, pH, specific conductance, and Secchi disk transparency or turbidity
 - v. Flow (acoustic Doppler flow meter)
 - vi. 24-hour measurement of dissolved oxygen (deployment of oxygen meter for 24 hours)
 - vii. Water chemistry sample (alkalinity, total and volatile suspended solids, chlorides, sulfates, total and orthophosphorus, ammonia, total Kjeldahl, and nitrate/nitrite nitrogen, total organic carbon, E. coli, and chlorophyll α) (LCRA lab)

4. PROJECT MANAGEMENT & QA/QC

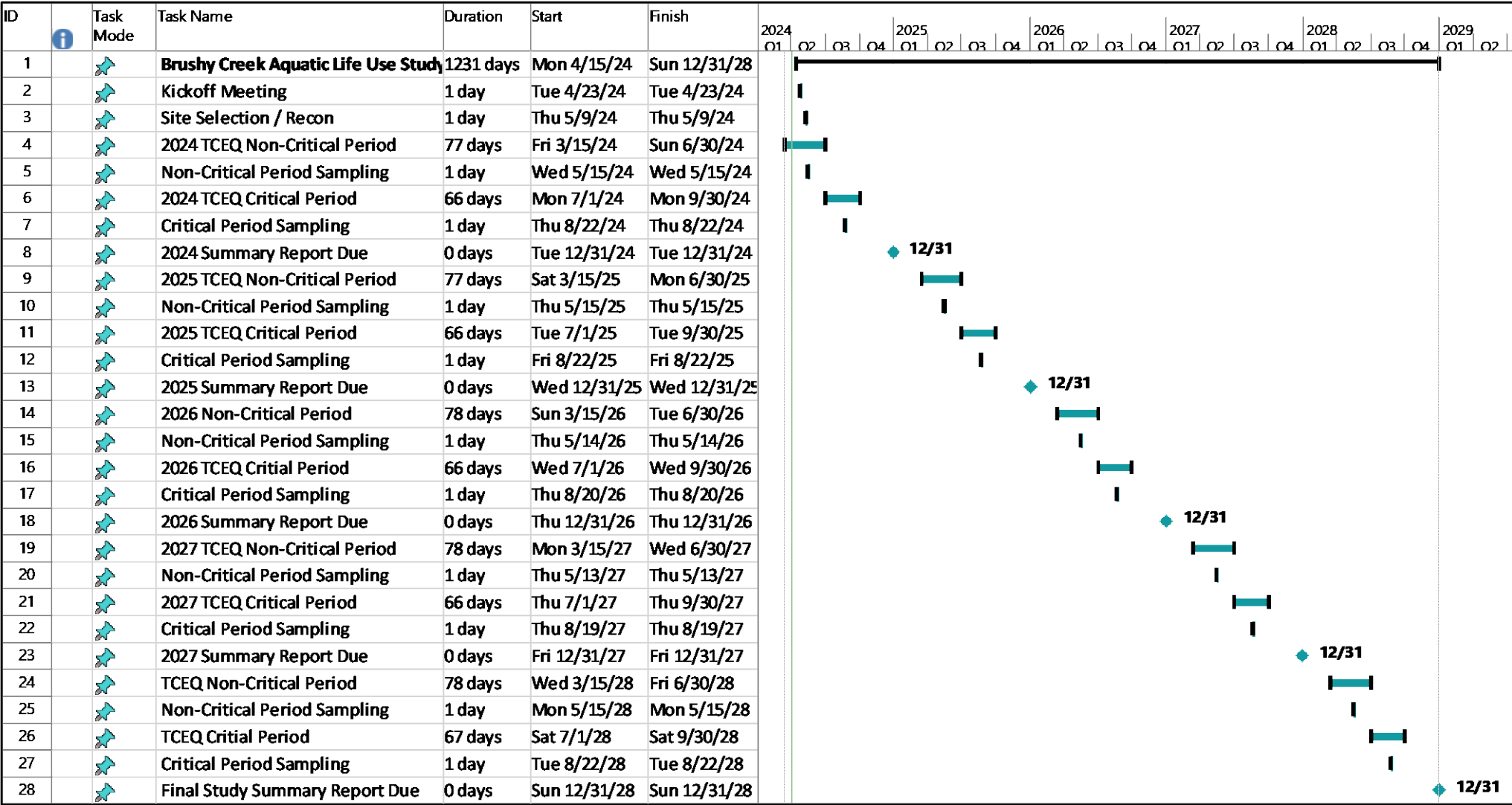
- a. Meet with the FNI PM on an as-needed basis.
- b. FNI will create a quality assurance and quality control plan for the project to assure the project will be appropriately managed, and data will meet quality expectations.
- c. A project schedule will be developed.

5. DELIVERABLES

- a. By December 31st of each sample year, an electronic copy of the data report will be submitted to the City summarizing completed work with data tabulation. Information relevant to the City's goals will also be described in summary format.
- b. By January 31, 2029, following the final year of sampling, a final report will be prepared which summarizes the data collected in the previous years of the study. This report will assess if Brushy Creek in Round Rock is meeting its designated high aquatic life use and if not, why not.

Exhibit "C"

Project: Brushy Creek Aquatic Life Use Study



Project: Brushy Creek Project Sc
Date: Thu 4/4/24

Task

Split

Milestone

Summary

Project Summary

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

External Tasks

External Milestone

Deadline

Progress

Manual Progress

Exhibit D
Fee Schedule

Project Name: _____ Brushy Creek Aquatic Life Monitoring 2024 - 2028

Task	Total Labor Hours	Total Loaded Labor Cost	Other Direct Costs	Subconsultants	TOTALS
Task 1: Year 1 Project Management	5	\$806.00	\$0.00	\$0.00	\$806.00
Task 2: Year 1 Recon, Sample Events & Annual Reporting	163	\$21,688.00	\$3,976.00	\$3,799.00	\$29,463.00
Task 3: Year 2 Project Management	4	\$669.00	\$0.00	\$0.00	\$669.00
Task 4: Year 2 Sample Events & Annual Reporting	154	\$21,198.00	\$3,976.00	\$3,799.00	\$28,973.00
Task 5: Year 3 Project Management	4	\$669.00	\$0.00	\$0.00	\$669.00
Task 6: Year 3 Sample Events & Annual Reporting	155	\$22,045.00	\$3,976.00	\$3,799.00	\$29,820.00
Task 7: Year 4 Project Management	3	\$600.00	\$0.00	\$0.00	\$600.00
Task 8: Year 4 Sample Events & Annual Reporting	155	\$22,927.00	\$3,976.00	\$3,799.00	\$30,702.00
Task 9: Year 5 Project Management	3	\$600.00	\$0.00	\$0.00	\$600.00
Task 10: Year 5 Sample Events & Final Reporting	198	\$29,883.00	\$3,976.00	\$3,799.00	\$37,658.00
GRAND TOTAL:	844	\$121,085.00	\$19,880.00	\$18,995.00	\$159,960.00