

PROFESSIONAL SERVICES AGREEMENT

STATE OF OKLAHOMA §

COUNTY OF POTTAWATOMIE §

This Agreement is entered into by City of Shawnee (City) and Freese and Nichols, Inc. (FNI). In consideration of FNI providing professional services for City and City utilizing these services, the parties hereby agree:

- I. **EMPLOYMENT OF FNI:** In accordance with the terms of this Agreement, City agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as **Shawnee Twin Lake #1 Dam Rehabilitation**.
- II. **SCOPE OF SERVICES:** FNI shall render professional services in connection with the Project as set forth in Attachment SC – Scope of Services and Responsibilities of City which is attached to and made a part of this Agreement.


COMPENSATION: City agrees to pay FNI for all professional services rendered under this Agreement. FNI shall perform professional services under this Agreement for a lump sum fee of \$262,000.
- III. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement, as set forth in Attachment TC – Terms and Conditions of Agreement, shall govern the relationship between the City and FNI.
- IV. **GOVERNING LAW; VENUE:** This Agreement shall be administered and interpreted under the laws of the State of Oklahoma. Venue of any legal proceeding involving this Agreement shall be in Pottawatomie County, Oklahoma.
- V. **EFFECTIVE DATE:** The effective date of this Agreement is 06/20/24.

Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the City and FNI. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the City and FNI and not for the benefit of any other party. This Agreement constitutes the entire agreement between the City and FNI and supersedes all prior written or oral understandings.

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

City of Shawnee, Oklahoma

FREESE AND NICHOLS, INC.

By:  _____
DocuSigned by:
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By:  _____

Name: Andrea Weckmueller-Behringer

Name: Victor M. Vasquez

Title: City Manager

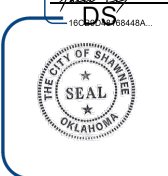
Title: Principal

Date: 6/20/2024

Date: 6-7-2024

Attest:  _____
DocuSigned by:
16C0A2B8448A...

Attest: _____



Victor M. Vasquez V.

Digitally signed by Victor M. Vasquez
V.
Location: Austin, TX
Contact Info: vmv@freese.com
Date: 2024.06.07 08:33:32-05'00'

SCOPE OF SERVICES AND RESPONSIBILITIES OF CITY OF SHAWNEE**PROJECT UNDERSTANDING**

Shawnee Twin Lakes #1 and #2 serve as the primary public water supply source to the City of Shawnee (City) and the surrounding area. The scope of this project includes dam safety engineering professional services on Shawnee Twin Lake Dam #1 to assist the City in addressing deficiencies identified in previous studies/inspections by others. The project will be broken into phases per this agreement and (and future amendments), with this first phase consisting of engineering evaluations and recommendations according to the scope in the following sections. Future phases may be added by amendment to this Agreement and may include additional studies as required, designs, bid/procurement assistance, permitting, and construction phase services.

ARTICLE I

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

- A. **FIELD INSPECTION:** FNI shall provide professional services in this phase as follows:
1. Conduct a visual site inspection of the crest and slopes of the embankment, spillway, spillway discharge channel, and abutments.
 2. Perform inspection in a single day with a multi-disciplinary team experienced in dam safety inspections in Oklahoma with similar structures.
 3. Inspect the upstream slope visually from the crest and with a drone from overhead and from the reservoir looking northeast at the embankment.
 4. Invite OWRB to accompany the FNI team on the inspection.
- B. **TOPOGRAPHIC SURVEYS:** CEC, Inc, as a subconsultant to FNI, will conduct surveys to supplement previous survey information from the 2021 surveys provided to FNI by the City. Task will include the following:
1. Perform topographic survey of the entire embankment of Twin Lake Dam #1 and immediate downstream and abutment areas of sufficient detail for 1-foot contours development.
 2. Locate spillway crest section and drop structure for Dam #1.
 3. Perform topographic survey of downstream spillway discharge channel for a distance of 600 feet.
 4. Locate above and below ground utilities, guard rails, and any other known above or below ground structures pertinent to analysis, design, or possible construction work.
 5. Perform topographic survey of the emergency spillway entrance and crest area on Twin Lake Dam #2.
 6. Compile existing and new CEC survey information into a combined site topographic model.
- C. **DOCUMENT REVIEW:** FNI will review available historical documents from OWRB and the City related to the design, construction, analysis, investigation, and inspection of Twin Lake Dam #1. Certain documents may also be needed for Dam #2 as it relates to the overall H&H analysis.

- D. HYDROLOGIC AND HYDRAULIC STUDIES: FNI will perform updated flood routing to determine the existing hydraulic adequacy relative to the OWRB requirements for an intermediate, high hazard dam. Task will include the following:
1. Perform watershed delineation based on publicly available LiDAR.
 2. Evaluate precipitation depth and distribution using OWRB's on-line tool.
 3. Develop HEC-HMS model that will be sufficient for existing spillway adequacy evaluation and any potential future spillway alternative modeling/reservoir routing use. This will include incorporation of the emergency spillway on Lake #2.
 4. Develop a limited HEC-RAS model for the connecting channel between the two lakes to better understand the hydraulic behavior during flood events.
- E. SEEPAGE AND SLOPE STABILITY ANALYSIS: Using the data from the 2024 Terracon report FNI will develop independent analysis parameters and perform independent seepage and slope stability analysis as follows:
1. Perform seepage analysis using the SEEP/W software program for up to 2 representative cross sections.
 2. Analyze slope stability for steady-state seepage, rapid drawdown, earthquake and flood condition load cases following the OWRB and USACE guidelines using the SLOPE/W software program for up to 3 representative cross sections.
- F. PRELIMINARY ENGINEERING REPORT (PER): This phase of the project will culminate in a PER that will include the following:
1. Results of field inspection including observations of the various dam components, photographs and location map.
 2. Results of independent seepage and slope stability analysis.
 3. Results of H&H analysis.
 4. Recommendations for monitoring, additional investigations/analyses, dam safety and maintenance repairs/rehabilitations as applicable.
 5. Budget-level cost estimates and conceptual drawings for recommended repair/rehabilitation items.
 6. Peer review of 2024 Terracon report.
- A draft report will be issued for City review. It is assumed that the draft report will be shared with OWRB and potentially USACE. One virtual meeting on the draft report is assumed with the City and one combined with OWRB/USACE. The final report will be prepared after incorporating any draft review comments. It is intended that some or all of the items recommended in the PER for dam safety improvements/modifications will be taken to final design via future amendment to this contract.

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:

1. None

ARTICLE III

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

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 in accordance with Table 2 below.

Table 2: Project Schedule

Site Inspection	Within 30 days of NTP
Surveys/H&H Evaluation	Within 120 days of NTP
Draft PER	Within 180 days of NTP
Final PER	Within 21 days of review comment resolution by City of Shawnee, OWRB, and USACE

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust the contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City 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.

ARTICLE V

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

- A. Designate in writing a person to act as City'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 City's policies and decisions with respect to FNI's services for the Project.
- B. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to evaluation, design or construction of the Project.
- C. 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.

- D. 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 City 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.
- E. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and City designate the following representatives:

City's Designated Representative – Seth Barkhimer, PE

Phone: (405) 878-2506

Email: seth.barkhimer@shawneeok.org

FNI's Designated Representative – Colin Young, PE

Phone: (539) 302-2634

Email: Colin.young@freese.com

FNI's Accounting Representative – Billy Metzger

Phone: (512) 617-3177

Email: billy.metzger@freese.com

TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS:** As used herein: (1) City refers to the party named as such in the Agreement between the City and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its subcontractors and their employees and agents; and (3) Services refers to the professional services performed by FNI pursuant to the Agreement.
2. **INFORMATION FURNISHED BY CITY:** City will 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. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by City. To the fullest extent permitted by law, City agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs, and expenses arising therefrom. FNI shall disclose to City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications, or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.
3. **STANDARD OF CARE:** FNI will perform all professional services under this Agreement with the professional skill and care ordinarily provided by competent members of the subject profession practicing under the same or similar circumstances and professional license as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of the subject profession. FNI makes no warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by FNI.
4. **INSURANCE:** FNI shall provide City with certificates of insurance with the following minimum coverage:

<u>Commercial General Liability</u> \$2,000,000 General Aggregate	<u>Workers' Compensation</u> As required by Statute
<u>Automobile Liability (Any Auto)</u> \$1,000,000 Combined Single Limit	<u>Professional Liability</u> \$3,000,000 Annual Aggregate
5. **CHANGES:** City, without invalidating the Agreement, may order changes within the general scope of Services required by the Agreement by altering, adding, and/or deducting from the Services to be performed. If any such change under this clause causes an increase or decrease in FNI's cost or time required for the performance of any part of the Services, an equitable adjustment will be made by mutual agreement and the Agreement will be modified in writing accordingly.

FNI will make changes to the drawings, specifications, reports, documents, or other deliverables as requested by City. However, when such changes differ from prior comments, directions, instructions, or approvals given by City or are due to causes not solely within the control of FNI, FNI shall be entitled to additional compensation and time required for performance of such changes to the Services authorized under this Agreement.
6. **OPINION OF PROBABLE CONSTRUCTION COSTS:** No fixed limit of project construction cost shall be established as a condition of the Agreement, unless agreed upon in writing and signed by the parties hereto. If a fixed limit is established, FNI shall be permitted to include contingencies for design, bidding, and price escalation in the construction contract documents to make reasonable adjustments in the scope of the project to adjust the project construction cost to the fixed limit. Such contingencies may include bid allowances, alternate bids, or other methods that allow FNI to

determine what materials, equipment, component systems, and types of construction are to be included in the construction contract documents. Fixed limits, if any, shall be increased by the same amount as any increase in the contract price after execution of the construction contract.

FNI will furnish an opinion of probable construction or program cost based on present day pricing, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices. Accordingly, FNI cannot and does not warrant or represent that bids or cost proposals will not vary from the City's project budget or from any estimate or opinion of probable construction or program cost prepared by or agreed to by FNI.

7. **PAYMENT:** Progress payments may be requested by FNI based on the amount of Services completed. Payment for Services shall be due and payable upon submission of a statement for Services to City and in acceptance of Services as satisfactory by City. Statements for Services shall not be submitted more frequently than monthly. Any applicable taxes imposed upon the Services, expenses, and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.

If City fails to make any payment due FNI for Services, expenses, and charges within 30 days after receipt of FNI's statement for Services therefore, the amounts due FNI will be increased at the rate of 1 percent per month from said 30th day, and, in addition, FNI may, after giving 7 days' written notice to City, suspend Services under this Agreement until FNI has been paid in full for all amounts due for Services, expenses, and charges.

If FNI's Services are delayed or suspended by City or are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

8. **OWNERSHIP OF DOCUMENTS:** All drawings, reports, data, and other project information developed in the execution of Services provided under this Agreement shall be the property of City upon payment of FNI's fees for Services. FNI may retain copies for record purposes. City agrees such documents are not intended or represented to be suitable for reuse by City or others. Any reuse by City or by those who obtained said documents from City without written verification or adaptation by FNI, will be at the City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. To the fullest extent permitted by law, City shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data, and other project information in the execution of Services provided under this Agreement in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to City, and FNI shall indemnify and hold harmless City from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting therefrom.

9. **TERMINATION:** The obligation to provide Services under this Agreement may be terminated by either party upon 10 days' written notice. In the event of termination, FNI will be paid for all Services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.
10. **CONSTRUCTION REPRESENTATION:** If required by the Agreement, FNI will furnish construction representation according to the defined scope for these Services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the construction contract documents. In performing these Services, FNI will report any observed deficiencies to City, however, it is understood that FNI does not guarantee the contractor's performance, nor is FNI responsible for the supervision of the contractor's operation and employees. FNI shall not be responsible for the contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident to the work of the contractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the project site or otherwise performing any of the work of the project. If City designates a resident project representative that is not an employee or agent of FNI, the duties, responsibilities, and limitations of authority of such resident project representative will be set forth in writing and made a part of this Agreement before the construction phase of the project begins.
11. **GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT:** City agrees to include provisions in the general conditions of the construction contract that name FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by the contractor for the project (except workers' compensation and professional liability policies); and (2) as an indemnified party in any indemnification provisions where City is named as an indemnified party.
12. **POLLUTANTS AND HAZARDOUS WASTES:** It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the project site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing Services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.
13. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City shall notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Agreement shall create any contractual relation between any subcontractor and City.
14. **PURCHASE ORDERS:** If a purchase order is used to authorize FNI's Services, only the terms, conditions, and instructions typed on the face of the purchase order shall apply to this Agreement. Should there be any conflict between the purchase order and the terms of this Agreement, then this Agreement shall prevail and be determinative of the conflict.

15. **CONSEQUENTIAL DAMAGES:** In no event shall FNI be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental, or consequential damages (such as loss of product, loss of use of equipment or systems, loss of anticipated profits or revenue, non-operation or increased expense of operation), arising out of, resulting from, or in any way related to this Agreement or the project.
16. **ARBITRATION:** No arbitration, arising out of or relating to this Agreement, involving one party to this Agreement may include the other party to this Agreement without their approval.
17. **SUCCESSORS AND ASSIGNMENTS:** City and FNI and the partners, successors, executors, administrators, and legal representatives of each are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither City nor FNI shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of Services hereunder.